

(23,795)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 644.

G. & C. MERRIAM COMPANY, APPELLANT.

vs.

THE SYNDICATE PUBLISHING COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

INDEX.

	Page
Transcript from the district court of the United States for the southern district of New York.....	1
(See index to this transcript following.)	
Proceedings in the United States circuit court of appeals.	2094
Opinion	2094
Decree	2094
Petition for appeal	2095
Order allowing appeal.....	2096
Assignment of errors	2097
Bond on appeal.....	2098
Clerk's certificate	2102
Citation and service.....	2102

1911

Vol. I, pp. 1-913.

Vol. II, pp. 914-1552.

Vol. III, pp. 1553-2093.

INDEX.

Pleadings.

	Page.	Vol.
Bill of Complaint against Syndicate Pub. Co.....	1	I.
Amendment to Bill	55	I.
Trade-Mark Exhibits	59	I.
Answer of Syndicate Pub. Co.....	951	II.
Replication	99	I.
Pleadings in Cupples & Leon case (omitted by stipulation).....	2090	III.
Order Re-opening Case for Sur-rebuttal.....	1911	III.

Complainant's Testimony.

Adams, John Quincy		
Direct	491	I.
Cross	496	I.
Bond, Charles D.		
Direct	106	I.
Cross	108	I.
Re-direct	111	I.
Re-cross	111	I.
Baker, Harris W.		
Direct	122	I.
Cross	128	I.
Boynton, Walter I.		
Direct	180	I.
Cross	184	I.
Buddecke, Walter M.		
Direct	258	I.
Cross	262	I.
Re-direct	268	I.
Re-cross	268	I.
Re-re-direct	268	I.
Re-re-cross	266	I.
Burlingham, E. Louise		
Direct	312	I.
Cross	315	I.
Re-direct	318	I.
Re-cross	316	I.

	Page.	Vol.
Britton, Sumner C.		
Re-direct	591	I.
Cross	596	I.
Cowles, Clinton W.		
Direct	101	I.
Cross	104	I.
Cooper, Joseph C.		
Direct	111	I.
Cross	115	I.
Re-direct	118	I.
Clark, George J.		
Direct	187	I.
Cross	190	I.
Re-direct	193	I.
Re-cross	193	I.
Re-re-direct	194	I.
Re-re-cross	194	I.
Crossman, Charles P.		
Direct	202	I.
Catharine, John Paul		
Direct	347	I.
Cross	349	I.
Re-direct	350	I.
Condit, H. M.		
Direct	387	I.
Clarke, William B.		
Direct	485	I.
Cross	488	I.
Re-direct	490	I.
Conroy, Michael J.		
Direct	634	I.
Draper, Andrew S.		
Direct	500	I.
Foley, Thomas F.		
Direct	278	I.
Cross	281	I.
Re-direct	283	I.
Re-cross	286	I.
Funk, Isaac K.		
Direct	362	I.
Cross	365	I.
Re-direct	367	I.
Fisher, Edith		
Direct	434	I.
Cross	435	I.
Gifford, John L.		
Direct	239	I.
Cross	243	I.
Re-direct	248	I.

INDEX.

	Page.	Vol.
Gash, Edward		
Direct	270	I
Cross	272	I
Re-direct	275	I
Re-cross	276	I
Geldart, Richard W.		
Direct	351	I
Cross	352	I
Re-direct	353	I
Hughes, Henry E.		
Direct	320	I
Cross	324	I
Re-direct	328	I
Haymaker, Homer A.		
Direct	368	I
Cross	381	I
Re-direct	386	I
Hagarty, Laura Dunbar		
Direct	440	I
Kronvall, Edward		
Direct	210	I
Lutz, Arthur		
Direct	296	I
Cross	299	I
Re-direct	301	I
Re-cross	301	I
Monroe, Robert C.		
Direct	120	I
Cross	122	I
McCarthy, John D.		
Direct	288	I
Cross	292	I
Re-direct	293	I
McMahon, Edward J.		
Direct	302	I
Cross	305	I
Re-direct	308	I
Re-cross	310	I
Re-re-direct	311	I
Martin, George H.		
Direct	457	I
Cross	459	I
Re-direct	464	I
Mead, Edwin D.		
Direct	472	I
Cross	475	I
Re-direct	480	I
Re-cross	483	I

	Page.	Vol.
Mawson, C. O. Sylvester,		
Direct	503	I.
Cross	554	I.
Murphy, J. F.		
Direct	617	I.
Cross	622	I.
Newberry, William W.		
Direct	402	I.
Cross	403	I.
Neuchterlein, Bernard		
Direct	444	I.
O'Neill, John J.		
Direct	465	I.
Cross	466	I.
Pickett, Harry Q.		
Direct	329	I.
Cross	331	I.
Pulcifer, Irving S.		
Direct	207	I.
Putnum, Irving		
Direct	390	I.
Cross	398	I.
Porter, Levi E.		
Direct	420	I.
Cross	430	I.
Re-direct	433	I.
Recalled:		
Direct	443	I.
Recalled:		
Direct	452	I.
Rogers, Charles		
Direct	195	I.
Robinson, Louis B.		
Direct	407	I.
Seybel, Frederick W.		
Direct	249	I.
Cross	252	I.
Re-direct	256	I.
Re-cross	257	I.
Smack, Ida B.		
Direct	354	I.
Cross	356	I.
Re-direct	361	I.
Timms, Charles J.		
Direct	340	I.
Cross	343	I.
Van Dyck, Henry H.		
Direct	332	I.
Cross	338	I.
Re-direct	339	I.

INDEX.

	Page.	Vol.
Washburn, Kirk N.		
Direct	132	I.
Cross	164	I.
Re-direct	176	I.
Re-cross	178	I.
Re-re-direct	179	I.
Recalled:		
Direct	214	I.
Cross	233	I.
Re-direct	236	I.
Recalled:		
Direct	635	I.
Cross	653	I.
Re-direct	656	I.
Re-cross	657	I.
Washburn, Kirk N., Jr.		
Direct	198	I.
Wells, Halla		
Direct	416	I.
Cross	417	I.
Re-direct	419	I.
Wadlin Horace G.		
Direct	467	I.
Cross	470	I.

Complainant's Exhibits.

	Page Offered.	Page Printed.	Vol.
<i>Advertisements:</i>			
Defendant's Advertisements	174		I.
Defendant's Advertisement of May 4, 1912...	1164		II.
Additional Advertisements of defendant's book	414		I.
Washburn's Exhibit 1, pages from "The Tidings"	236		I.
Washburn's Exhibit 2, pages from "Sycamore Sentinel"	236		I.
Washburn's Exhibit 3, pages from "The Elliot Messenger"	236		I.
Washburn's Exhibit 4, pages from "The Pastor's Call"	236		I.
Washburn's Exhibit 5, pages from "The Church Invitation	236		I.
Washburn's Exhibit 6, pages from "Our Master"	236		I.
Washburn's Exhibit 7, pages from "St. John's Message"	236		I.
McCarthy's Advertisements	290		I.
McCarthy's Carton	290		I.
Lutz's Carton	302		I.

	Page Offered.	Page Printed.	Vol.
Burlingham's Carton	318		I.
Timm's Carton	341		I.
Halla Well's Carton	419		I.
Joseph Horne Co.'s Advertisement.....	621		I.
Reading Notices of Defendant's Dictionary in Pittsburg Post	621		I.
Advertisement of Defendant's Dictionary in Pittsburg Post of Feb. 12, 1911.....	622		I.
"Uncle Sam" Advertisement in Pittsburg Post	622		I.
"Uncle Sam" Advertisement clipped from Boston American of September 12, 1910....	649		I.
Specimen of Advertisements copied by de- fendant	649		I.
Dictionary Coupon used by Boston Ameri- can	640	640	I.
Dictionary Coupon used by Defendant.....	640	640	I.
Cut of defendant's dictionary sent to com- plainant	121		I.
Cut No. 1 returned to complainant.....	121		I.
Cut No. 2 returned to complainant.....	121		I.
Price-List of complainant's publications.....	659	659	I.

Copyright Certificates.

Copyright certificates relating to Crown Dic- tionary	173	162	I.
Copyright Certificates of Webster Series....	215	721	I.

Dictionaries:

<i>Complainant's Dictionaries:—</i>	Page Offered.	Vol.
Webster's Collegiate Dictionary	162	I.
Webster's Academic Dictionary	162	I.
Webster's High School Dictionary.....	162	I.
Webster's Primary Dictionary	162	I.
Webster's Common School Dictionary	162	I.
Webster's Condensed Dictionary	175	I.
Webster's Dictionary (1847 edition).....	570	I.
Webster's Dictionary (1864 edition)	570	I.
Webster's International Dictionary (1890 edition)....	570	I.
Webster's New International Dictionary (1909 edition)	570	I.

Defendant's Dictionaries:—

Webster's New Standard Dictionary.....	206	I.
Webster's New Century Dictionary.....	206	I.
Exhibit B. referred to by H. W. Baker (Webster's New Standard Dictionary)	206	I.
Exhibit C. referred to by H. W. Baker (Webster's New Century Dictionary)	206	I.
Defendant's Book compared with British Empire Dictionary	508	I.

INDEX.

vii

	Page Offered.	Vol.
Defendant's dictionaries purchased by witnesses:		
Burlingham's dictionary	318	I.
Catharine's dictionary	348	I.
Cowles dictionary	103	I.
Fisher's dictionary	434	I.
Foley's dictionary	295	I.
Gash's dictionary	295	I.
Geldart's dictionary	351	I.
Hughes' dictionary	322	I.
Lutz's dictionary	302	I.
McCarthy's dictionary	290	I.
McMahon's dictionary	304	I.
Pickett's dictionary	330	I.
Pickett's dictionary (flexible cover).....	330	I.
Pulcifer's dictionary	208	I.
Seybel's dictionary	208	I.
Timm's dictionary	341	I.
Well's dictionary	419	I.

Miscellaneous American Dictionaries:

Balch's Complete Compendium	666	I.
Century Dictionary	571	I.
Craig's Dictionary	667	I.
Crown Dictionary (Exh. A. referred to by H. W. Baker)	206	I.
Donohue's Standard New Century Dictionary.....	665	I.
Excelsior Dictionary	668	I.
Hansell's Practical Illustrated Pronouncing Pocket Dictionary	667	I.
Hurst's American Standard Dictionary	666	I.
Hurst's American Unabridged Dictionary.....	666	I.
Hurst's American Popular Dictionary	666	I.
Hurst's Handy Reliable Dictionary	667	I.
Hurst's American Diamond Pronouncing Dictionary..	667	I.
Popular American Dictionary	668	I.
Standard Dictionary (Funk & Wagnall's)	570	I.
Student's Standard Dictionary (Funk & Wagnall's)....	570	I.
Worcester's Dictionary	570	I.

Miscellaneous British Dictionaries

Annandale's Concise Dictionary	571	I.
British Empire Dictionary	507	I.
Cassell's Dictionary	571	I.
Chamber's Twentieth Century Dictionary	571	I.
Concise Oxford Dictionary	571	I.
Johnson's Dictionary (1799 edition)	570	I.
Nuttall's Dictionary	571	I.
Ogilvie's Imperial Dictionary (1883 edition).....	571	I.
Stormonth's Dictionary	571	I.
Student's Imperial Dictionary	507	I.

	Page Offered.	Page Printed.	Vol.
<i>Documents and Tables Relating to Contents and Origin of Defendant's Dictionary</i>			
Red Letter Exhibit Showing identity of defendant's dictionary with British Empire Dictionary	514	889	I.
Analysis of Price's British Empire Dictionary and defendant's Webster's New Century Dic- tionary	517	517	I.
Summary of Comparison of defendant's dic- tionary with British Empire Dictionary....	519	519	I.
British Spellings in defendant's dictionary....	525	525	I.
Cross-references in defendant's dictionary....	529	529	I.
Mixed definitions in defendant's dictionary..	533	533	I.
British definitions in defendant's dictionary..	535	535	I.
Words referred to in definitions, but not in vocabulary of defendant's dictionary.....	540	540	I.
Parallel Column Exhibit in Answer to Peck's Exhibit	551		I.
<i>Documents relating to use and Meaning of Name Webster as Applied to Dictionaries</i>			
Title Pages, Cover Inscriptions, and Copyright Notices of Webster Series.....	214	671	I.
Webster in the Courts	174	853	I.
<i>Early Contracts and Assignments</i>			
Webster Contract of 1853.....	215	783	I.
Lippincott Contract of 1858.....	215	795	I.
Contract and Assignment of University and Pocket Dictionaries	215	797	I.
Contract and Assignment of Webster's High School Dictionary	215	801	I.
Contract and Assignment of Webster's Acade- mic Dictionary	215	805	I.
Delegation of Power to Executors by Heirs..	215	809	I.
Contract between Heirs and G. & C. Mer- riam as to Abridged Dictionaries.....	215	810	I.
<i>Trade-Marks Exhibits</i>			
Registered Trade-Mark No. 1 filed with Bill..		59	I.
Registered Trade-Mark No. 2 filed with Bill..		61	I.
Registered Trade-Mark No. 3 filed with Bill..		63	I.
Registered Trade-Mark No. 4 filed with Bill..		65	I.
Registered Trade-Mark No. 5 filed with Bill..		67	I.
Registered Trade-Mark No. 6 filed with Bill..		69	I.
Registered Trade-Mark No. 7 filed with Bill..		71	I.
Registered Trade-Mark No. 8 filed with Bill..		73	I.
Registered Trade-Mark No. 9 filed with Bill..		75	I.
Registered Trade-Mark No. 10 filed with Bill..		77	I.
Certified copies of Registered Trade-Marks..	414	813	I.

Defendant's Testimony.

	Page.	Vol.
Carroll, Lauren		
Direct	1904	III.
Cross	1908	III.
Recalled:		
Direct	2040	III.
Cross	2042	III.
Doran, George Henry		
Direct	1193	II.
Cross	1197	II.
Donohue, Wm. F.		
Direct	1047	II.
Cross	1052	II.
Re-direct	1059	II.
Re-cross	1060	II.
Eckle, August E.		
Direct	1395	II.
Cross	1409	II.
Re-direct	1417	II.
Gray, William M.		
Direct	1432	II.
Cross	1438	II.
Re-direct	1454	II.
Re-cross	1532	II.
Hesslein, Max		
Direct	1001	II.
Cross	1009	II.
Re-direct	1014	II.
Re-cross	1015	II.
Leon, Arthur T.		
Direct	1240	II.
Cross	1254	II.
Re-direct	1280	II.
Re-cross	1293	II.
Little, Joseph J.		
Direct	1688	III.
Cross	1691	III.
Re-direct	1699	III.
Re-cross	1701	III.
McKnight, Robert		
Direct	1420	II.
Cross	1424	II.
Re-direct	1429	II.
Re-cross	1430	II.
Nolan, John W.		
Direct	1838	III.
Cross	1857	III.
Re-direct	1900	III.
Re-cross	1902	III.

	Page.	Vol.
Ogilvie, George W.		
Direct	1771	III.
Cross	1795	III.
Peck, Harry Thurston		
Direct	1534	II.
Cross	1562	III.
Re-direct	1677	III.
Re-cross	1684	III.
Recalled:		
Direct	1914	III.
Cross	1960	III.
Re-direct	1986	III.
Re-cross	1987	III.
Pfanstiehl, H. Josephine		
Direct	1017	II.
Cross	1020	II.
Re-direct	1021	II.
Re-cross	1022	II.
Re-re-direct	1023	II.
Rankin, Luther M.		
Direct	1024	II.
Rolfe, John Carew		
Direct	1088	III.
Cross	1994	III.
Re-direct	2017	III.
Re-cross	2020	III.
Sherwood, Robert E.		
Direct	1207	II.
Cross	1219	II.
Re-direct	1227	II.
Re-cross	1228	II.
Shultz, Herman		
Direct	1297	II.
Cross	1389	II.
Re-direct	1394	II.
Skeoch, Thomas I.		
Direct	1229	II.
Cross	1236	II.
Re-direct	1239	II.
Swift, Albert L.		
Direct	1140	II.
Cross	1149	II.
Re-direct	1182	II.
Re-cross	1186	II.
Re-re-direct	1190	II.
Re-re-cross	1192	II.
Recalled:		
Direct	1704	III.
Cross	1751	III.
Re-direct	1768	III.
Re-cross	1769	III.

INDEX.

	Page.	Vol.
Watrous, Francis M.		
Direct	2021	III.
Cross	2027	III.
Wright, Frank E.		
Direct	1061	II.
Cross	1083	II.
Re-direct	1113	II.
Re-cross	117	II.
Re-re-direct	1132	II.
Re-re-cross	1137	II.

Defendant's Exhibits.

	Page Offered.	Page Printed.	Vol.
<i>Advertisements and Newspaper Clippings</i>			
"Makers & Producers of Premium Special- ties"	1190		II.
Catalogue of Cupples & Leon with Notice...	1248		II.
Miscellaneous Newspaper Advertisements....	1706		III.
Miscellaneous Newspaper Advertisements....	1714		III.
Advertisements in connection with "Web- ster's Condensed Dictionary" cut from St. Louis Republic	1719-1733		III.
Miscellaneous Newspaper Advertisements..	1743-1747		III.
Advertisement from St. Louis Post-Dis- patch	1771		III.
Advertisements of the Springfield Union....	1854		III.
Clipping from the Springfield Republican....	1855		III.
Advertisement from "Outing," (offered at final hearing)			

Copyright Certificates

Four certificates of copyright issued to Frank E. Wright	1739	1740	III.
---	------	------	------

Dictionaries.

No. 1. "Webster's Unabridged," published for the trade	1004		II.
No. 2. Webster's National Pictorial Dictionary	1018		II.
Webster's New Illustrated Dictionary.....	1080		II.
Webster's Condensed Dictionary, Twentieth Century Edition	1082		II.
Specimen Book, Webster's New Century Dic- tionary	1247		II.
Specimen Book, Webster's New Century Dic- tionary	1248		II.
Webster's Encyclopedic Dictionary	1828		III.
Webster's Universal Dictionary	1828		III.
Webster's Reliable Dictionary	1828		III.
Webster's Adequate Dictionary	1828		III.
Hill's Vest Pocket Webster's Dictionary....	1828		III.

	Page Offered.	Page Printed.	Vol.
Wehman Brothers Latest Vest Pocket Webster's Dictionary	1828		III.
Peerless Webster Self-Pronouncing Dictionary	1828		III.
Excelsior Webster Pocket Speller and Definer	1829		III.
Webster's Pocket Dictionary and Speller.....	1829		III.
Webster's pronouncing Dictionary of the English Language	1829		III.
Hurst's Webster's Dictionary	1829		III.
A Concise Webster's Dictionary	1829		III.
Webster's Library Dictionary for Home, School and Office	1829		III.
Webster's American Standard Dictionary....	1829		III.
Webster's School and Office Dictionary.....	1830		III.
Webster's Universal Self-Pronouncing Dictionary	1830		III.
Webster's Business and College Dictionary....	1830		III.
Webster's Modern Dictionary of the English Language for Home, School and Office....	1831		III.
Laird & Lee's Webster's Modern Dictionary..	1831		III.
Laird & Lee's Webster's New Standard Dictionary of the English Language, Elementary School Edition	1831		III.
Laird & Lee's Webster's New Standard Dictionary, Intermediate School Edition.....	1831		III.
Laird & Lee's Webster's New Standard Dictionary of the English Language, Common School Edition	1831		III.
Laird & Lee's Webster's New Standard Dictionary, Illustrated Library Edition.....	1832		III.
Laird & Lee's New Standard American Dictionary, Encyclopedic Edition.....	1832		III.
Webster's Condensed Dictionary	1833		III.
An American Dictionary of the English Language, Noah Webster, published 1846 by Harper Bros.	1833		III.
John Ogilvie's "Imperial Dictionary," First Edition	1954		III.
Webster's New Illustrated, marked by Peck..	1959		III.
Webster's 1847, marked by Peck.....	1959		III.
Webster's Twentieth Century Dictionary published by the Madison Book Company, Chicago, 1902	663		I.
<i>Documents and Tables Relating to Contents and Origin of Defendant's Dictionary</i>			
"Exhibit A," Prefatory Portions of Defendant's Dictionary	1560		III.
"Exhibit B," Introductory Portions of Webster's 1847	1559		III.
"Exhibit C," Peck's Identities	1556		III.
Tables Explanatory of Peck's percentages....	1960		III.

INDEX.

xiii

	Page Offered.	Page Printed.	Vol.
<i>Documents Relating to Use and Meaning of Name Webster as Applied to Dictionaries</i>			
Cards of Witness Schultz	1308	1308	II.
Cards of Witness Gray.....	1455	1456	II.
Catalogue Cards from Library of Congress...	1780	1780	III.
Schedule produced by Witness Rankin.....	1026	1027	II.
Photographs of Covers and Title Pages of Dictionaries (Offered at Final Hearing)...			

Miscellaneous Documents:

Exhibits "A" and "B" Circular and Letter....	1132		II.
Telegram from Pittsburg Post to Swift.....	1726	1726	III.
Letter from Edward T. Roe.....	1906	1907	III.
Eleven Letters commending the Syndicate Dictionary	1706	1707	III.

Stipulations.

Substance of Stipulations.

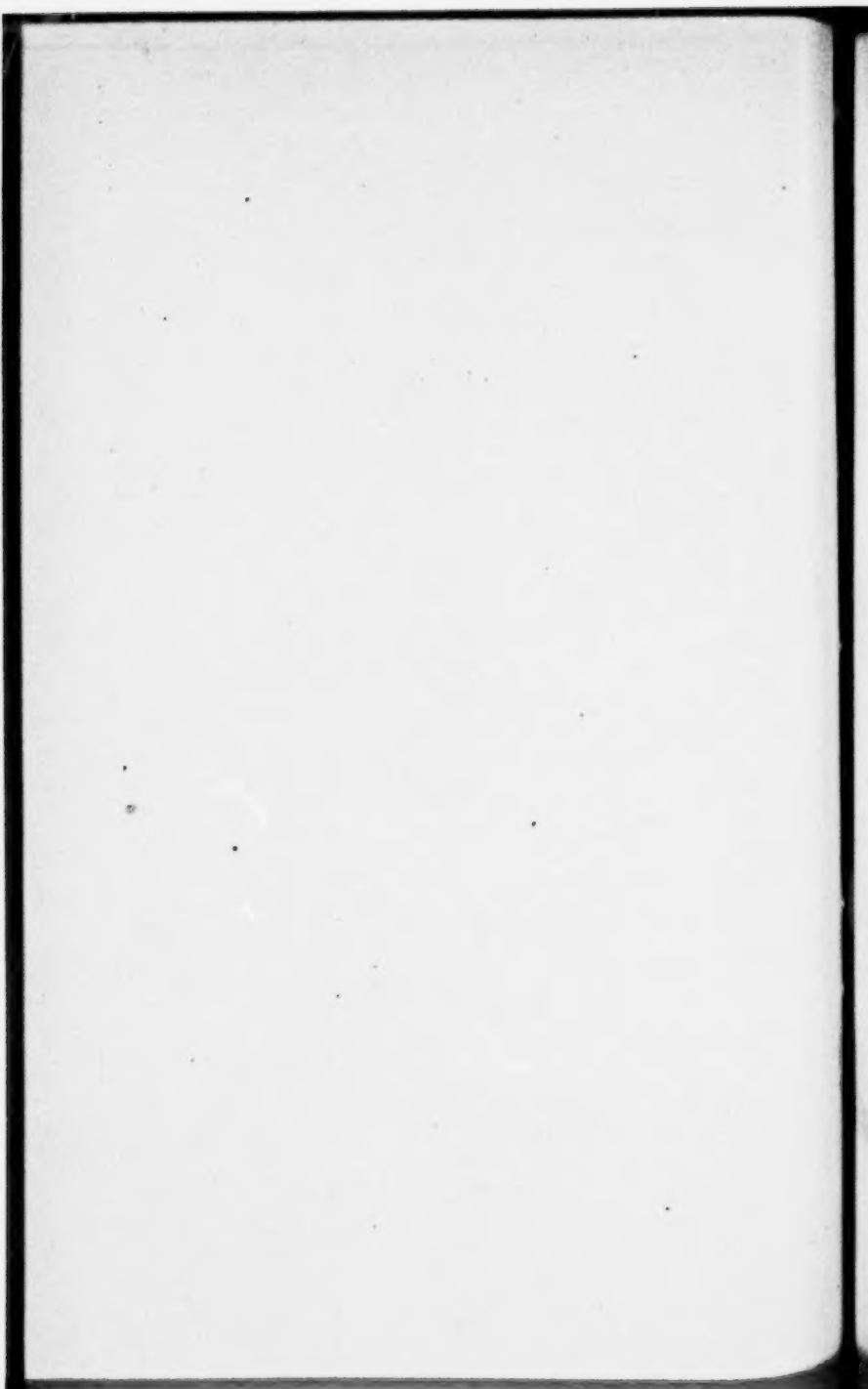
	Page.	Vol.
Taking depositions by stenographer.....	101	I.
Waiving signature of witnesses	101	I.
Inserting affidavit of Harris W. Baker.....	122	I.
Inserting affidavit of Kirk N. Washburn.....	132	I.
Exhibits referred to in Washburn affidavit.....	173	I.
Taking depositions by stenographer.....	214	I.
Waiving signatures of witnesses	214	I.
Exhibits offered in evidence to remain in possession of party offering them	257	I.
Objections to testimony	295	I.
Dictionary of Ida B. Smack.....	356	I.
Reserving objections to testimony	373	I.
Inserting affidavit of H. M. Condit.....	387	I.
Taking depositions by stenographer	416	I.
Waiving signature of witnesses	416	I.
Waiving signature of witness Wadlin	467	I.
Inserting affidavit of Andrew S. Draper.....	499	I.
Taking testimony by stenographer.....	503	I.
Reserving objections	516	I.
Taking depositions in Chicago	521	I.
Dictionaries referred to considered in evidence.....	570	I.
Taking Chicago Depositions	591	I.
Reserving objections	611	I.
Production of Dictionary Exhibits	663	I.
Waiving oath and signature of certain witnesses.....	1046	II.
Taking depositions by stenographer	1061	II.
Waiving oath and signature of certain witnesses.....	1060	II.
Waiving oath and signature of certain witnesses.....	1061	II.
Spreading on record correspondence between parties.....	1065	II.

	Page.	Vol.
Spreading on record correspondence between parties.....	1070	II.
Admitting exhibits offered with Wright affidavit.....	1080	II.
Admitting exhibits offered with Wright affidavit.....	1082	II.
Waiving oath and signature of certain witnesses.....	1140	II.
Taking depositions by stenographer	1140	II.
Waiving oath and signature of certain witnesses.....	1206	II.
Waiving oath and signature of certain witnesses.....	1228	II.
Consent that one objection apply to whole line of testimony	1234	II.
Waiving signature of certain witnesses.....	1239	II.
Spreading on record correspondence between parties.....	1243	II.
Waiving signature of certain witnesses	1297	II.
Consent that one objection apply to whole line of testimony	1304	II.
Waiving signature of certain witnesses.....	1395	II.
Consent that one objection apply to whole line of testimony	1403	II.
Setting forth letter to Eckle	1405	II.
Waiving signature of certain witnesses	1420	II.
Waiving signature of certain witnesses	1431	II.
Consent that one objection apply to whole line of testimony	1433	II.
Waiving signature of certain witnesses	1534	II.
Waiving signature of certain witnesses.....	1687	III.
Waiving signature of certain witnesses	1703	III.
Admitting newspaper advertisements in evidence.....	1732	III.
Waiving signature of certain witnesses	1771	III.
Waiving signature of certain witnesses.....	1827	III.
Admitting Saalfeld Books in Evidence.....	1827	III.
Admitting in evidence twenty-two Dictionaries of various publishers	1828	III.
Taking depositions by stenographer.....	1839	III.
Waiving signature of certain witnesses.....	1904	III.
Taking depositions by stenographer	1914	III.
Waiving signature of certain witnesses.....	1914	III.
Admitting complainant's affidavits of Mawson and Haskins	2046	III.
<hr/>		
Opinion on Final Hearing.....	2057	III.
Decrees:		
Merriam v Cupples & Leon Co.....	2071	III.
Merriam v Syndicate Pub. Co.....	2072	III.
Petitions for Appeal:		
Merriam v Cupples & Leon Co.....	2073	III.
Merriam v Syndicate Pub. Co.	2078	III.
Orders Allowing Appeal:		
Merriam v Cupples & Leon Co.....	2077	III.
Merriam v Syndicate Pub. Co.....	2083	III.

INDEX.

xv

	Page.	Vol.
Assignments of Error:		
Merriam v Cupples & Leon Co.....	2074	III.
Merriam v. Syndicate Pub. Co.....	2080	III.
Appeal Bonds:		
Merriam v Cupples & Leon Co.....	2084	III.
Merriam v Syndicate Pub. Co.....	2084	III.
Citations:		
Merriam v. Cupples & Leon Co.....	2085	III.
Merriam v Syndicate Pub. Co.....	2086	III.
Orders as to Exhibits:		
Merriam v Cupples & Leon Co.....	2087	III.
Merriam v Syndicate Pub. Co.....	2088	III.
Stipulation as to Record on Appeal:.....	2089	III.
Stipulation to Abide Event.....	2091	III.
Stipulation for Certification of Record.....	2092	III.
Certificate	2093	III.



CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY, a Corporation,
Complainant,

vs.

SYNDICATE PUBLISHING COMPANY, a Corporation,
Defendant.

Bill of Complaint.
Eq. 8-162. 2

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York: 3

G. & C. Merriam Company, a Corporation duly organized under the laws of the State of Massachusetts, brings this its bill of complaint against the Syndicate Publishing Company, a Corporation organized and existing under the laws of the State of New York, and thereupon your orator complains and says:

I.

FIRST.—That your orator, the complainant, is a corporation duly organized under the laws of the State of Massachusetts, to wit, on or about the 29th day of March, 1892, and before the commission by the defendant of the acts hereinafter complained of, and is a citizen of said State of Massachusetts, carrying on business as a publisher and bookseller, having its main office and place of business at Springfield, in the State of

Bill of Complaint.

Massachusetts aforesaid, and that the defendant is a corporation organized under the laws of the State of New York, having its principal office and place of business in the Borough of Manhattan, in the Southern District of New York, and is a citizen of New York, and a resident of said Southern District of New York.

- 6 SECOND.—That prior to the year 1847 one Noah Webster was the author, proprietor and publisher of numerous books upon various subjects, among which were included several dictionaries of the English language, published respectively in or about the years 1806, 1807, 1828, 1829 and 1840, each of which was known by the name of Webster's Dictionary. That for the purpose of indicating origin and ownership of said books, said Webster caused to be plainly marked, printed or embossed upon the title page or upon the back or
- 7 cover of each of said books offered for sale the word "Webster's." That in the year 1847, and for a long time prior thereto said word Webster upon the back or cover of a book or upon the title page thereof was well understood by the public to mean that said book was prepared by or under the authority and direction of said Noah Webster, and said books enjoyed a high reputation and commanded a large sale, and the right to use the word Webster thereon became a valuable property
- 8 right.

THIRD.—That said Noah Webster deceased in or about the year 1843, having at the time of his death in course of preparation and in an advanced state of completion a new and revised edition of the previous editions of said Webster's Dictionary. That on or about the year 1847 the firm of G. & C. Merriam, then conducting business as publishers and booksellers at the City of Springfield,

Bill of Complaint.

9

in the State of Massachusetts, acquired by purchase and assignment from the executors, the heirs at law and next of kin, and the widow and children of the said Noah Webster, deceased, all the right, title and interest which said Noah Webster had in the aforesaid dictionaries, together with the good will and trade-name thereof, and said firm thereupon proceeded to complete said edition of Webster's Dictionary, employing for that purpose William G. Webster, a son, and Chauncey A. Goodrich, a son-in-law of said Noah Webster, who with numerous other editors and literary men completed said edition and said dictionary was published by said firm of G. & C. Merriam in the year 1847 under the title of "An American Dictionary of the English Language."

10

FOURTH.—That for the purpose of indicating to the public the author and compiler of said prior editions of said Dictionary and said prior editions' relation to and connection with said edition of the year 1847, and for the purpose of an assurance and guarantee to the public and to consumers and users of dictionaries in general that said edition of the year 1847 was prepared, proof read, printed, bound and published by or under the general supervision of said firm of G. & C. Merriam, said firm adopted as their own special trade-name for said Dictionary, aside from its formal title of "An American Dictionary of the English Language" the name "Webster's Dictionary," either with or without the word "Unabridged," and caused the same to be conspicuously embossed or marked or placed upon the outside or back of said Dictionary, or upon both.

11

12

FIFTH.—That by reason of the great renown of said Noah Webster as the originator and author of the earlier editions of said Dictionary.

13

Bill of Complaint.

- and by reason of the great learning and care bestowed by him in preparing the same, and by reason of the great learning, skill and care of the editors and assistants in preparing and editing the later editions thereof, and by reason of the great skill and care exercised by said firm of G. & C. Merriam in preparing, typesetting, printing, proof reading, binding, publishing and
- 14 advertising said Dictionary, it became well known and understood among the trade and by all booksellers, dealers in and users of Dictionaries and by the public in general, that all Dictionaries bearing the title "Webster's Dictionary," either alone or in combination with other words, were the Dictionaries so prepared and printed and published by said firm of G. & C. Merriam and none other, and the said title "Webster's Dictionary" both
- 15 with and without said other words became a guarantee of the accuracy of said book and a guarantee that the same had been prepared by the said G. & C. Merriam and their said editors and assistants and by none other, and a guarantee of the correctness of said book as a Dictionary of the English language, and by said name became well known as the book so prepared by the said firm of G. & C. Merriam, and by said name it was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by
- 16 said firm, and was cited as an authority in courts of law and by the public in general, and was known by all people desiring to purchase and to use a Dictionary as the book of the said G. & C. Merriam and theirs exclusively.

SIXTH.—And your orator further shows unto your Honors that subsequently the firm of G. & C. Merriam continued to print and publish said Dictionary and to sell the same by its said title "An American Dictionary of the English Lang-

Bill of Complaint.

17

uage," but more commonly by their own special trade-name or title "Webster's Dictionary," either with or without the descriptive word "Unabridged," until about the year 1864, when said G. & C. Merriam caused a new and greatly enlarged and thoroughly revised edition of said dictionary to be prepared by Noah Porter, with the assistance of said William G. Webster and Chauncey A. Goodrich, and a large corps of expert editors and assistants, and thereafter the said edition of the year 1847 was entirely withdrawn from the market. 18

That for the purpose of indicating to the public the authors of said revision and its connection with the prior editions thereof, and said prior editors' relation to our connection with said edition of the year 1864, and for the purpose of a further assurance and guarantee to the public and to consumers and users in general, that said edition of the year 1864, was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm renewed and continued as their own special trade-name for the Dictionary of 1864, aside from its formal title, the name "Webster's Dictionary," either with or without the word "Unabridged," and caused the same to be marked or placed upon the outside or back of said Dictionary, or both, as they had previously done in the case of the earlier editions thereof and which said revision was duly copyrighted according to law. 19 20

SEVENTH.—That thereafter said Dictionaries become still more widely known and highly esteemed by the trade and by the public in general by their said name of Webster's Dictionary as the literary work of said Webster and his son

21

Bill of Complaint.

and son-in-law and said Noah Porter and their said assistants, and as the typography, composition, electrotyping, printing and binding of the said firm of G. & C. Merriam and after the transfer to G. & C. Merriam & Co. and your orator as hereinafter set forth, as the typography, composition, electrotyping, printing and binding of the said G. & C. Merriam & Co. or of your orator

22 G. & C. Merriam Company respectively, and none other, by means of which the public and purchasers and users of Dictionaries had and have an assurance of the literary as well as of the typographical and mechanical quality of the goods, and of the integrity of your orator in the preparation, printing and binding of said Dictionary and of all the mechanical work employed therein.

23 EIGHTH.—Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the said American Dictionary of the English Language of Noah Webster, and the title of which was set forth on the title page thereof as follows:

24 “A Primary School Dictionary of the English Language; Explanatory, Pronouncing and Synonyms, with an appendix containing various Useful Tables; Mainly Abridged from the Latest Edition of the American Dictionary of Noah Webster, LL. D., by Wm. G. Webster and Wm. A. Wheeler. Illustrated with more than 200 Engravings on Wood,”

and which was copyrighted according to the laws

Bill of Complaint.

25

of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Primary School Dictionary" of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from its formal title of a "Primary School Dictionary of the English Language," the name "Webster's Primary School Dictionary" and caused the same to be printed or embossed upon the front cover or back or both of said Dictionary. 26 27

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's Primary School Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else and by said title or cover title or name of Webster's Primary Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's Primary School Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively. 28

Bill of Complaint.

NINTH.—Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the said American Dictionary of the English Language of Noah Webster, and the title of which was set forth on the title page thereof as follows:

30 “A Common School Dictionary of the English Language; Explanatory; Pronouncing and Synonymous; with an Appendix containing Various Useful Tables; mainly Abridged from the latest edition of the American Dictionary of Noah Webster, LL.D., by Wm. G. Webster and Wm. A. Wheeler, Illustrated with nearly 250 Engravings on Wood,”

31 and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Com-

32 mon School Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from the formal title of a Common School Dictionary of the English Language, the name “Webster's Common School Dictionary” and caused the same to be printed and embossed upon the front cover or back or both of said Dictionary.

Bill of Complaint.

33

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became universally known, among the trade and to the public in general, by its cover or outside title of Webster's Common School Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by said G. & C. Merriam and no one else, and by said cover title or name of Webster's Common School Dictionary the same was described in all printed catalogues, accounts, statments and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's Common School Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively. 34

TENTH.—Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the Quarto Dictionary of Noah Webster, LL.D., and the title of which was set forth on the title page thereof as follows: 35

“Academic Edition, A Dictionary of the English Language; Explanatory, Pronouncing, Etymological and Synonymous. With an Appendix containing Various Useful Tables; Mainly Abridged from the Latest Edition of the Quarto Dictionary of Noah Webster, LL.D., by Wm. G. Webster and Wm. A. Wheeler. Illustrated with more than 350 Engravings on Wood,” 36

and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

Bill of Complaint.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Dictionary of the English Language was prepared, proof
 38 read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from its formal title of "A Dictionary of the English Language" the name "Webster's Academic Dictionary" and caused the same to be printed or embossed upon the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said
 39 book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's Academic Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said cover title or name of Webster's Academic Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all
 40 correspondence held by the said firm with the public in general and became known by said name Webster's Academic Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively.

ELEVENTH.—Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and

Bill of Complaint.

41

published a certain other Dictionary of the English Language which was an abridgment from the said Quarto Dictionary of the English Language of Noah Webster, LL.D., and the title of which was set forth on the title page thereof as follows:

“A Dictionary of the English Language; Explanatory, Pronouncing, Etymological and Synonymous; With a Copious Appendix. Mainly Abridged from the Quarto Dictionary of Noah Webster, LL.D. Revised by Chauncey A. Goodrich, DD., and Noah Porter, D.D., by Wm. A. Wheeler. Illustrated with more than 600 Engravings on Wood,”

42

and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade name for said Dictionary aside from its formal title of a Dictionary of the English Language the name “Webster's National Pictorial Dictionary,” and caused the same to be printed or embossed upon the front cover or back of said Dictionary.

43

44

That by reason of the great skill and care exercised by G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's National Pictorial Dic-

Bill of Complaint.

tionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said cover title or name of Webster's National Pictorial Dictionary the same, was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the
 46 said firm with the public in general and became known by said name Webster's National Pictorial Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively.

TWELFTH.—Your orator further shows to your Honors that on or about the year 1868 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the
 47 Quarto Dictionary of the English Language of Noah Webster, LL.D., and the title of which was set forth on the title page thereof as follows:

“A High School Dictionary of the English Language; Explanatory, Pronouncing and Synonymous; With an Appendix Containing Various Useful Tables; Mainly Abridged from the Latest Edition of the Quarto Dictionary of Noah Webster, LL.D., by Wm. G. Webster and Wm. A. Wheeler. Illustrated
 48 with more than 300 Engravings on Wood,”

and which was copyrighted according to the laws of the United States in the year 1868 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance

Bill of Complaint.

49

and guarantee to the public and purchasers and users of Dictionaries in general that said High School Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from its formal title of "A High School Dictionary of the English Language" the name Webster's High School Dictionary, and caused the same to be printed or embossed upon the front cover or back or both of said Dictionary. 50

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's High School Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said cover title or name of Webster's High School Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's High School Dictionary by all people desiring to purchase and sell or use such a dictionary as the book of the said G. & C. Merriam exclusively. 51 52

THIRTEENTH.—Your orator further shows to your Honors that on or about the year 1870 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English language which was an abridgment from said American Dictionary of the Eng-

Bill of Complaint.

lish Language of Noah Webster, and the title of which was set forth on the title page thereof as follows:

"A Pocket Dictionary of the English Language abridged from the American edition of Noah Webster, LL.D., by William G. Webster and William A. Wheeler, illustrated with nearly 200 engravings on wood."

54

and which was copyrighted according to the laws of the United States in the year 1870 by the said G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and
 55 users of Dictionaries in general that said Pocket Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary; aside from the formal title of "A Pocket Dictionary of the English Language," the name "Webster's Pocket Dictionary" and caused the same to be printed or embossed upon
 56 the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by the said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of "Webster's Pocket Dictionary," and said cover or outside title became a guarantee of the accuracy of said book and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and

Bill of Complaint.

57

by said outside or cover title or name of Webster's Pocket Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name "Webster's Pocket Dictionary" by all people desiring to purchase and sell or use such a Dictionary as the book of said G. & C. Merriam exclusively.

58

FOURTEENTH.—Your orator further shows unto your Honors that on or about the year 1879 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was a new edition of the said Dictionary of 1864, and the title of which was set forth on the title page thereof as follows, to wit:

"An American Dictionary of the English Language, by Noah Webster, LL.D., thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., LL.D., late professor in Yale College, and Noah Porter, D.D., LL.D., President of Yale College, with an appendix of useful tables to which is added a supplement of nearly 5,000 new words with their definitions, also a new pronouncing biographical Dictionary containing nearly 10,000 names of noted persons of ancient and modern times, giving their nationality, occupation and dates of their birth and death."

59

60

That said Dictionary was copyrighted according to the laws of the United States in the year 1879 by said G. & C. Merriam, and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries.

Bill of Complaint.

of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers and users of Dictionaries in general that said American Dictionary of the English Language was prepared, proof read, printed bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted as their
 62 own special trade-name for their said Dictionary aside from its formal title of an "American Dictionary of the English Language" the name "Webster's Dictionary" either with or without the descriptive word "Unabridged" and caused the same to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing
 63 said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Unabridged Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by its said cover and outside title of Webster's Dictionary or Webster's Unabridged Dictionary the same was described
 64 in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Dictionary or Webster's Unabridged Dictionary to all people desiring to purchase and use such a Dictionary and was cited as an authority by courts of law and Judges thereof as the Dictionary of said G. & C. Merriam exclusively.

FIFTEENTH.—Your orator further shows unto

Bill of Complaint.

65

your Honors that on or about the year 1882 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was a new edition of the said Dictionary of 1864, and the title of which was set forth on the title page thereof as follows, to wit:

“Subscription Editon, with Historical Supplement. An American Dictionary of the English Language, by Noah Webster, LL.D., thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., late Professor in Yale College, and Noah Porter, President of Yale College. With an appendix of useful tables, to which is added a supplement of nearly 5,000 words with their definitions, etc., also a new pronouncing Bioragphical Dictionary containing nearly 10,000 names of noted persons in ancient and modern times, giving their nationality, their occupation, and the dates of their birth and death. With a Historical Supplement containing a brief history of the United States, and of each State, lives of the Presidents from Washington to Arthur, with a portrait of each, and a great variety of other valuable information.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1882 by said G. & C. Merriam. That for the purpose of indicating to the public the authority and source of said Dictonary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said

Bill of Complaint.

American Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of "An American Dictionary of English Language" the name "Webster's Dictionary" either
70 with or without the descriptive word "Unabridged," and caused the same to be printed or embossed upon the front cover or upon the back of said Dictionaries or upon both.

That by reason of the great skill and care exercised by the said G. & C. Merriam in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary, and said outside or
71 cover title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam exclusively and by its said cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Dictionary or Webster's
72 Unabridged Dictionary by all people desiring to purchase and use such a Dictionary and was cited as an authority by courts of law and Judges thereof as the book of the said G. & C. Merriam and of no one else.

SIXTEENTH.—On information and belief, that prior to the year 1864, complainant's predecessor, the said firm of G. & C. Merriam acquired by purchase and assignment from the owners of the

Bill of Complaint.

73

copyrights thereof, and from the respective publishers thereof, all the right, title and interest which said owners and publishers respectively had in and to all dictionaries theretofore published and sold under a name or names of which the words "Webster" or Webster's" formed a part, together with the good-will and trade-name thereof. That prior to said year 1864, all rights in all then existing "Webster" dictionaries, both 74
abridged and unabridged, became and were concentrated and vested in complainant's predecessors, said firm of G. & C. Merriam. That among the Dictionaries so acquired by complainant's said predecessor, were the following named dictionaries, to wit, "A Primary School Dictionary," copyrighted in or about the year 1838 by Noah Webster; "A Pocket Dictionary," copyrighted in or about the year 1846 by William G. Webster; a 75
dictionary abridged from the quarto edition of Noah Webster, copyrighted in or about the year 1847 by Chauncey A. Goodrich; "A High School Dictionary," copyrighted in or about the year 1848 by William E. Ellsworth and Henry White, executors of Noah Webster; "A New University Pronouncing Dictionary," copyrighted in or about the year 1856 by William E. Ellsworth and others, each and all of which said dictionaries had printed or embossed on the back or cover thereof the word "Webster's." 76

II.

FIRST.—And your orator further shows that on or about the year 1882 by a partial change in and addition to the number of members of the firm of G. & C. Merriam, the firm of G. & C. Merriam & Co. was formed, which said firm of G. & C. Merriam & Co. succeeded to all the rights of the said firm of G. & C. Merriam and the firm of G. & C. Merriam assigned and trans-

ferred their said publishing business and all their rights, title, interest and good will in and to the business and property of said firm including the exclusive right to print, publish and sell said Dictionaries and all of them, and the use of the name Webster and all other names and titles applied to said Dictionaries by said firm of G. & C. Merriam to said firm of G. & C. Merriam & Co., and which said firm of G. & C. Merriam & Co. continued to carry on business at said City of Springfield, in the State of Massachusetts, as it had been previously carried on by said firm of G. & C. Merriam, until the assignment and transfer to your orator as hereinafter set forth.

78 SECOND.—Your orator further shows unto your Honors that on or about the year 1884 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

80 “A Practical Dictionary of the English Language, giving the correct spelling, pronunciation and definition of words, with an appendix containing various useful tables chiefly derived from Webster’s Unabridged Dictionary; edited under the supervision of Noah Porter, D.D., LL.D., President of Yale College. By Dorsey Gardner. With nearly 1,500 illustrations.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1884 by said G. & C. Merriam & Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary’s relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to

Bill of Complaint.

81

the public and to all purchasers, sellers and users of Dictionaries in general that said Practical Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam & Co., said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of "A Practical Dictionary of the English Language" the name "Webster's Practical Dictionary" and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both. 82

That by reason of the great skill and care exercised by the said G. & C. Merriam & Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Practical Dictionary, and said outside or cover title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam & Co., and by its said outside or cover title of Webster's Practical Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Practical Dictionary by all people desiring to purchase and use such a Dictionary as the book of the said G. & C. Merriam & Co. exclusively. 83 84

THIRD.—Your orator further shows unto your Honors that on or about the year 1884 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language which was a new edition of the said Dictionary of 1864, and the title of which was set forth on the title page thereof as follows, to wit:

85

Bill of Complaint.

86

"New Edition with Supplement. An American Dictionary of the English Language. By Noah Webster, LL.D., thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., late Professor in Yale College, and Noah Porter, D.D., LL.D., President of Yale College. With an appendix of useful tables to which is added a Supplement of nearly 5,000 new words with their definitions, etc. A New Pronouncing Gazetteer of the World, containing names of over 25,000 places, also a new Pronouncing Biographical Dictionary containing nearly 10,000 names of noted persons in ancient and modern times."

87

88

That said Dictionary was copyrighted according to the laws of the United States in the year 1884 by the said G. & C. Merriam & Co., and that for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with the said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said American Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam & Co., said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of "An American Dictionary of the English Language" the name "Webster's Dictionary" either with or without the descriptive word "Unabridged," and caused the same to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exer-

cised by the said G. & C. Merriam & Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary, and said title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam & Co. exclusively, and by its cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general, and became known by said name Webster's Dictionary or Webster's Unabridged Dictionary by all people desiring to purchase and use such a Dictionary as the book of the said G. & C. Merriam & Co. exclusively.

FOURTH.—Your orator further shows unto your Honors that on or about the year 1884 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

“A Condensed Dictionary of the English Language with copious etymological derivations, pronunciations, spelling and appendixes for general reference; chiefly derived from the Unabridged Dictionary of Noah Webster, LL.D. Edited under the supervision of Noah Porter, DD., LL.D., President of Yale College. By Dorsey Gardner; with over 1,500 illustrations.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1884 by the said G. & C. Merriam & Co. and for the purpose of indicating to the public the authority and

Bill of Complaint.

source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said American Dictionary of the English Language was prepared, proof read, printed, 94 bound and published by or under the general supervision of the said G. & C. Merriam & Co. said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title "A Condensed Dictionary" the name "Webster's Condensed Dictionary" and caused the same to be printed or embossed upon the front cover or upon the back or both of each of said Dictionaries and also prefixed the same to the title as their own special trade-name.

95 That by reason of the great skill and care exercised by the said G. & C. Merriam & Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Condensed Dictionary, and said outside cover title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam & Co. exclusively, and by its said cover or outside title of Webster's Condensed Dictionary the same was described in all printed catalogues, accounts, statements and advertisements 96 and in all correspondence held by said firm with the public in general and became known by said name Webster's Condensed Dictionary by all people desiring to purchase, sell and use such a Dictionary as the book of the said G. & C. Merriam & Co. exclusively.

FIFTH.—Your orator further shows unto your Honors that on or about the year 1890 said G. & C.

Bill of Complaint.

97

Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

“Webster’s International Dictionary of the English Language. Being the authentic edition of Webster’s Unabridged Dictionary comprising issues of 1864, 1879 and 1884. Now thoroughly revised and enlarged under the supervision of Noah Porter, D.D., LL.D., of Yale University. With a voluminous appendix.” 98

That said Dictionary was copyrighted according to the laws of the United States in the year 1890 by said G. & C. Merriam & Co.

That the name “Webster” was embodied in the title and printed or embossed upon the front cover and back of each of said Dictionaries in addition to the words “International Dictionary,” for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary’s relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1859, 1864, 1879, 1882 and 1884, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster’s International Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam & Co. and the words “Webster’s Dictionary” either with or without the word “International” became the trade-name and distinguishing mark of said Dictionary. 99. 100.

That by reason of the great care and skill exercised by the said G. & C. Merriam & Co. in preparing said book and placing same upon the market,

101

Bill of Complaint.

the same became known to the trade and to the public in general by its cover or outside title of Webster's International Dictionary, but more commonly by the name Webster's Dictionary, said word International being used merely to distinguish said Dictionary from the earlier editions thereof, and said word Webster became a guarantee of the accuracy of said book, and a guarantee that same had been prepared by the said G. & C. Merriam & Co. exclusively, and said word Webster was used in describing said book in all printed catalogues, accounts, statements and advertisements, and in all correspondence held by said firms with the public in general, and said book became known as Webster's Dictionary or Webster's International Dictionary, by all people desiring to purchase and use such a Dictionary, and by said name was cited as an authority by courts of law and Judges thereof as the book of said G. & C. Merriam & Co. exclusively.

103

III.

FIRST.—And your orator further shows that on or about the year 1892, your orator was duly created a corporation by and under the laws of the State of Massachusetts as hereinbefore set forth, and thereupon the said publishing business of said firm of G. & C. Merriam & Co. and the right, title interest and good will of said firm in and to said business and property including the exclusive right to print, publish and sell said Dictionaries and all of them, and to use the name Webster and all other names and titles applied to said Dictionaries by the said firms G. & C. Merriam and G. & C. Merriam & Co. were duly assigned and transferred to and became legally vested in your orator, and your orator thereafter continued to carry on said publishing business at

104

Bill of Complaint.

105

said City of Springfield in the State of Massachusetts as it had previously been carried on by said G. & C. Merriam and G. & C. Merriam & Co.

SECOND.—Your orator shows further unto your Honors that subsequently on or about the year 1892, your orator, said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit: 106

“A Dictionary of the English Language; designed for use in the Primary Schools. Abridged from Webster’s International Dictionary; 400 illustrations.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1892 by said G. & C. Merriam Co., and that for 107 the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary’s relation to and connection with said Dictionaries of the year 1847 and the year 1864 and 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers or users of Dictionaries in general that said Primary Dictionary was prepared proofread, printed, bound and published by or under the general supervision of your orator, 108 your orator also adopted as its own special trade-name for said Dictionary aside from its formal title the words “Webster’s Primary School Dictionary,” and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by your orator in preparing said book,

Bill of Complaint.

the same became known to the trade and to the public in general by its cover or outside title of Webster's Primary Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by your orator, the said G. & C. Merriam Co. exclusively, and by its said cover or outside title of Webster's Primary Dictionary

110 the same was described in a l printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known as Webster's Primary Dictionary by all people desiring to purchase, sell and use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

THIRD.—Your orator further shows unto your

111 Honors that on or about the year 1892 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

“A Dictionary of the English Language with an appendix containing a pronouncing vocabulary of biblical, classical, mythological, historical and geographical proper names. Abridged from Webster's International Dictionary; 800 illustrations.”

112

That said Dictionary was copyrighted according to the laws of the United States in the year 1892 by your orator, said G. & C. Merriam Co. and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864 and 1890, and for the purpose of further assur-

Bill of Complaint.

113

ance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster's High School Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words "Webster's High School Dictionary," and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both. 114

That by reason of the great skill and care exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's High School Dictionary, and said title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by your orator, the said G. & C. Merriam Co., exclusively, and by its said cover or outside title of Webster's High School Dictionary the same was described in all catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's High School Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, said G. & C. Merriam Co. exclusively. 115 116

FOURTH.—Your orator further shows unto your Honors that on or about the year 1892 your orator, the said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, and the title of which was set forth on the title page thereof as follows, to wit:

117

Bill of Complaint.

“A Dictionary of the English Language, designed for use in common schools. Abridged from Webster’s International Dictionary; 500 illustrations.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1892 by your orator, said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary’s relation to and connection with the said Dictionaries of the year 1847 and the year 1864 and the year 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Common School Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of your orator, your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words “Webster’s Common School Dictionary,” and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

119

120

That by reason of the great skill and care exercised by your orator in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster’s Common School Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared, printed and published by the said G. & C. Merriam Co. exclusively, and by its said cover or outside title “Webster’s Common School Dictionary” the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by your orator with the public in general and became known

Bill of Complaint.

121

by said name Webster's Common School Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

FIFTH.—Your orator further shows onto your Honors that on or about the year 1895 your orator caused to be prepared and printed and published a certain other Dictionary of the English Language, and the title of which was set forth on the title page thereof as follows, to wit: 122

“A Dictionary of the English Language, giving derivations, pronunciations, definition and synonyms of a large vocabulary of words in common use; with an appendix containing various useful tables. Abridged from Webster's International Dictionary; over 800 illustrations.”

123.

That said Dictionary was copyrighted according to the laws of the United States in the year 1895 by your orator, and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the years 1864, 1890 and 1892, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words “Webster's Academic Dictionary,” and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both. 124

125

Bill of Complaint.

That by reason of the great skill and care exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Academic Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book and a guarantee that the same had been prepared by your orator, the said
 126 G. & C. Merriam Co. exclusively, and by its said name Webster's Academic Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Academic Dictionary by all people desiring to purchase and use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

127

SIXTH.—Your orator further shows unto your Honors that on or about the year 1896 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

“A Dictionary of the English Language giving the derivations, pronunciations, definitions and synonyms of a large vocabulary of the words in common use. With an appendix
 128 containing commercial and various other useful tables, mainly abridged from Webster's International Dictionary; over 800 illustrations.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1895 by said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and

source of said Dictionary and said Dictionary's relation to and connection with the Dictionaries previously published and sold by your orator or its predecessors and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words "Webster's Counting House and Family Dictionary," or "Webster's Counting House Dictionary," and caused the same to be printed upon the top of the title page and also to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both. 130

That by reason of the great skill and care exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Counting House Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by your orator exclusively, and by its said cover or outside title of Webster's Counting House Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Counting House Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively. 131 132

SEVENTH.—Your orator further shows unto your Honors that on or about the year 1898 said

133

Bill of Complaint.

G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

134

“A Dictionary of the English Language. Giving the derivations, pronunciations, definitions and synonyms of a large vocabulary of the words occurring in Literature, Art, Science, and the common speech, with an Appendix containing a copious Scotch Glossary, a pronouncing vocabulary of Proper Names, and various useful tables mainly abridged from Webster’s International Dictionary; over 1,000 illustrations.”

135

That said Dictionary was copyrighted according to the laws of the United States in the year 1898 by said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary’s relation to and connection with the Dictionaries previously published and sold by your orator or its predecessors and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary, aside from its formal title, the words Webster’s Collegiate Dictionary and caused the same to be printed upon the top of the title page and also to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

136

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in prepar-

ing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Collegiate Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and by its said cover or outside title of Webster's Collegiate Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Collegiate Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, the said G. & C. Merriam Co., exclusively. 138

EIGHTH.—Your orator further shows unto your Honors that on or about the year 1900 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit: 139

“New Edition with Supplement of New Words. Webster's International Dictionary of the English Language, being the authentic Edition of Webster's Unabridged Dictionary, comprising the issues of 1864, 1879 and 1884. Thoroughly revised and much enlarged under the supervision of Noah Porter, DD., LL.D. With a voluminous appendix to which is now added a Supplement of 25,000 words and phrases. W. T. Harris, Ph.D., LL.D., editor in chief.” 140

That said Dictionary was copyrighted according to the laws of the United States in the year 1900, by said G. & C. Merriam Co.

Bill of Complaint.

That the name "Webster" was embodied in the title and printed or embossed upon the front cover and upon the back of each of said dictionaries in addition to the words "International Dictionary," for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the years 1828, 1841, 1847,
 142 1859, 1864, 1879, 1882, 1884, and 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster's International Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of said G. & C. Merriam Co., and the words "Webster's Dictionary" either with or without the word "International" became the trade-name and distinguishing mark of said Dic-
 143 tionary.

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book and placing same upon the market, the same became known to the trade and to the public in general by its cover or outside title of Webster's International Dictionary, but more commonly by the name Webster's Dictionary, said word International being used merely to distinguish said Dictionary from the earlier editions thereof, and said word Webster became a guaran-
 144 tee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and said word Webster was used in describing said book in all printed catalogues, accounts, statements, and advertisements, and in all correspondence held by said company with the public in general, and said book became known by said name Webster's Dictionary or Webster's International Dictionary, by all people desiring to purchase and use such a Diction-

Bill of Complaint.

145

ary, and by said name was cited as an authority by the courts of law and Judges thereof, as the book of the said G. & C. Merriam Co. exclusively.

NINTH.—Your orator further shows unto your Honors that on or about the year 1900, said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit: 146

“Reference History Edition. Webster’s International Dictionary of the English Language. Being the Authentic edition of Webster’s Unabridged Dictionary, comprising the issues of 1864, 1869 and 1884. Thoroughly revised and much enlarged under the supervision of Noah Porter, D.D. LL.D. 147 With a voluminous appendix and reference history to which is now added a Supplement of 25,000 words and phrases. W. T. Harris, Ph.D., LL.D., Editor in Chief.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1900 by said G. & C. Merriam Co.

That the name “Webster” was embodied in the title and printed or embossed upon the front cover and upon the back of each of said Dictionaries in addition to the words “International Dictionary,” for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary’s relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1864, 1879, 1882, 1884, 1890 and 1900, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers 148

Bill of Complaint.

and users of Dictionaries in general that said Webster's International Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., and the words "Webster's Dictionary" either with or without the word "International" became the trade-name and distinguishing mark of said Dictionary.

- 150 That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book and placing same upon the market, the same became known to the trade and to the public in general by its cover or outside title of Webster's International Dictionary, but more commonly by the name Webster's Dictionary, said word International being used merely to distinguish said Dictionary from the earlier editions thereof, and said word Webster became
- 151 a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and said word Webster was used in describing said book in all printed catalogues, accounts, statements and advertisements, and in all correspondence held by said Company with the public in general, and said book became known by said name Webster's Dictionary or Webster's International Dictionary, by all people desiring to purchase and use such a Dictionary, and by said name
- 152 was cited as an authority by courts of law and Judges thereof, as the book of the said G. & C. Merriam Co. exclusively.

TENTH.—And your orator further shows that whenever the original copyright of the several dictionaries of your orator or its several predecessors was about to expire, the persons lawfully entitled to a renewal of said respective copy-

Bill of Complaint.

153

rights, duly renewed said several copyrights respectively, according to the Revised Statutes of the United States in such case made and provided, and thereupon duly assigned said several renewed copyrights to your orator or to such of its said predecessors as was then lawfully entitled to print, publish and sell said books respectively as the owner of the original copyright thereof.

154

IV.

And your orator further shows that the Dictionaries prepared and published by your orator or its predecessors, as hereinbefore set forth, comprise two separate series, viz., a series of unabridged or exhaustive Dictionaries, and a series of smaller Dictionaries abridged from the unabridged edition and designed for special uses or for use by particular classes of persons.

Said series of unabridged Dictionaries is composed of the Compendious Dictionary of the year 1806, and the successive editions of the American Dictionary published, as hereinbefore set forth, in the years 1828, 1840, 1847, 1859, 1864, 1879, 1882, 1884, 1890 and 1900. The Dictionary of each of said years (except the first) was a new and revised edition of the last preceding edition of said Dictionary and upon the publication of each of said successive editions the prior edition of said Dictionary was substantially withdrawn from the market, and thereafter the latest edition of said Dictionary alone was known among the trade and by purchasers and users of said Dictionary as Webster's Dictionary, and all previous editions of said Dictionary were supplanted and made obsolete by said successive new editions, and thereafter no copies of said earlier and obsolete editions were printed or sold by your orator or its predecessors, except to a limited ex-

155

156

tent and upon special orders calling for copies of a particular edition, and with this exception, no copies of said earlier editions could be purchased except as second-hand books, in consequence whereof the name Webster as applied to dictionaries has always been understood by the trade and by purchasers and users of said dictionaries to mean the latest edition of said dictionaries
 158 published by your orator or its predecessors.

The various Dictionaries constituting said series of abridged Dictionaries published by your orator or its predecessors, as hereinbefore set forth, were revised and new editions thereof were published from time to time, whereupon the previous editions of said several Dictionaries respectively were substantially withdrawn from the market, and thereafter the latest editions of said Dictionaries alone were known among the trade
 159 and by purchasers and users of said dictionaries as Webster's Dictionaries, and all previous editions of said dictionaries were supplanted and made obsolete by said successive new editions, and thereafter no copies of said earlier and obsolete editions were printed or sold by your orator or its predecessors, and none could be purchased except as second-hand books, in consequence whereof the name Webster as applied to dictionaries has always been understood by the
 160 purchasers and users of said dictionaries to mean the latest editions of said dictionaries published by your orator or its predecessors.

Your orator further shows unto your Honors that on or about the year 1903 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit:

“An American Dictionary of the English

Bill of Complaint.

161

Language by Noah Webster, LL.D. Thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., late Professor in Yale College, and Noah Porter, D.D., LL.D., President of Yale College. With an Appendix of useful tables including recent population statistics of the World and a supplement of more than Five Thousand Words and Phrases."

162

That said Dictionary was copyrighted according to the laws of the United States in the year 1903 by said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of your orator and its predecessors, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., said Company adopted as their own special trade-name for said Dictionary aside from its formal title the words Webster's Unabridged Dictionary, and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover and upon the back of each of said Dictionaries.

163.

164

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Unabridged Dictionary, but more commonly by the name Webster's Dictionary, said word "Unabridged" being used merely to distinguish said edition from the Inter-

165

Bill of Complaint.

166

national edition of said Webster's Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and by the said name of Webster's Unabridged Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said Company with the public in general and became known by said name Webster's Dictionary or Webster's Unabridged Dictionary by all people desiring to purchase and use such a Dictionary as the book of the said G. & C. Merriam Co. exclusively.

167

That said Dictionary was a new edition of the aforesaid Dictionary of 1879 and was designed and put upon the market for the purpose of supplying the demand for a modern low-priced genuine Webster Dictionary, and not as a new and later edition of said Webster's International Dictionary, and both said Webster's Unabridged Dictionary and said Webster's International Dictionary are now being offered for sale and sold by your orator by their said respective names or titles.

168

Your orator further shows unto your Honors that in or about the year 1909, said G. & C. Merriam Co. caused to be prepared, and printed and published a certain other dictionary of the English Language, and title of which was set forth on the title page thereof, as follows:

"Webster's New International Dictionary of the English Language, based on the International Dictionary of 1890 and 1900. Now completely revised in all departments, including also a Dictionary of geography, and of biography, being the latest authentic quarto edition of the Merriam series. W. T.

Bill of Complaint.

169

Harris, Ph. D., LL.D., Editor in Chief, F. Sturgis Allen, General Editor."

That said Dictionary was duly copyrighted according to the laws of the United States, in the year 1909 by said G. & C. Merriam Co.

That the name "Webster's " was embodied in the title and printed or embossed upon the front cover and back of each of said Dictionaries in addition to the words "New International Dictionary," for the purpose of indicating to the public the authority and source of said Dictionary, and said Dictionary's relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1859, 1864; 1879, 1882, 1884, 1890, and 1900, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said "Webster's New International Dictionary" was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., and the words "Webster's Dictionary," either with or without the words "New" and "International" became and are the trade-name and distinguishing mark of said Dictionary.

That by reason of the great care and skill exercised by said G. & C. Merriam Co., in preparing said book, and placing same upon the market, the same became known to the trade and to the public in general, by its cover or outside title of "Webster's New International Dictionary." Said words "New International," being used merely to distinguish said Dictionary from the earlier edition thereof, and said word "Webster" became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and said word "Webster" was used

Bill of Complaint.

in describing said book in all printed catalogues, accounts, statements and advertisements, and in all correspondence held by your orator with the public in general, and said book became known as "Webster's Dictionary" by all people desiring to purchase and use such a Dictionary, and by said name was cited as an authority by courts of law and Judges thereof as the book of G. & C. Merriam

174 Co. exclusively.

V.

FIRST.—And your orator further shows that in obtaining the necessary skill in preparing the manuscript of said Dictionaries, and in preparing the electrotype plates from which said Dictionaries have been printed, and in printing, binding and publishing and advertising said Dictionaries, said firm of G. & C. Merriam and said firm of G. & C. Merriam & Co. and your orator have expended very large sums of money, to wit, many hundreds of thousands of dollars.

175

That for more than fifty years last past your orator or its predecessors have continuously and without interruption had upon the market and have offered for sale and sold Dictionaries of the English Language prepared or caused to be prepared as to their literary matter by your orator or its predecessors or one of them upon principles first enunciated by said Noah Webster, and continually enlarged, expanded and amplified by educated and learned professors and editors or their assistants, and typeset, electrotyped, proof read, printed, bound and published by skilled mechanics and artisans, all under the general charge and direction and at the expense of your orator or its said predecessors or one of them, each and all of which said Dictionaries have borne the title and have been known and described and recognized by the public as the work of your orator or its

176

Bill of Complaint.

177

said predecessors or one of them by their said trade-name or title of Webster's Dictionaries, and that your orator and its said predecessors have at all times and under all circumstances and by all means in their power maintained, asserted and insisted upon their exclusive right to the word Webster as their special trade-name as applied to Dictionaries of the English Language.

178

VI.

That by reason of the long continued use by your orator and by its predecessors under whom it rightfully claims, and also by reason of the acquiescence of the public in general it has come to be understood and believed by the people and the public, especially by retail dealers and buyers and sellers of Dictionaries that all Dictionaries bearing the name of Webster's either with or in combination with other titles or names are the literary and mechanical production of your orator, and by reason thereof, and by reason of the literary and mechanical skill, industry and enterprise of the said G. & C. Merriam and the said G. & C. Merriam & Co. and of your orator and of their several and respective editors and mechanics in producing said Dictionaries as well in their literary as in their mechanical construction and in advertising and calling the attention of the public to the same, a large demand has been created for its said Dictionaries by said trade-name of Webster's Dictionaries and by which said name the same have been and now are associated in the minds of the public and of purchasers, dealers in and users of Dictionaries with that of said G. & C. Merriam or G. & C. Merriam & Co. or your orator as the makers thereof, and is the genuine trade-name of your orator or its predecessors as aforesaid, and has been for upwards of fifty years and is now

179

180

181

Bill of Complaint.

recognized and acquiesced in as such by the public generally and by dealers in and users of Dictionaries as indicating to the public and to said dealers and users the origin of said Dictionaries, and that they are your orators' production and manufacture and have the superior quality of your orator for which the same has become well known and distinguished by the public; and thereby your orator has acquired for itself a large and lucrative trade as well in the United States as also in all parts of the world where the English Language is either used or studied, from which large and increasing profits are accruing and are likely to accrue except for the wrongful acts of the defendant and others conspiring with it as hereinafter set forth.

VII.

183 Your orator further shows, on information and belief, that defendant, well knowing the premises, and intending to injure and defraud your orator and to deprive it of making sales of your orator's said dictionaries or some of them, and intending to impose upon and defraud the public in general, by inducing the public to believe that they were purchasing or could purchase from the defendant, dictionaries which had been prepared by or under the general supervision of said G. & C. Merriam or said G. & C. Merriam & Co., or one of them, or
 184 your orator, or its corps of authors, editors and compilers, and which had been type set, electrotyped, printed, corrected, bound and published by said firms or one of them, or by your orator, at a much less rate than your orator's uniform charge therefor, since the first day of January, 1911, and before the beginning of this suit, against the will of your orator and in defiance of its rights, has offered for sale and sold, and has offered induce-

Bill of Complaint.

185

ments to the public to make purchases of, and to order from it dictionaries described as follows, to wit:

Dictionaries bearing both upon the title page, and upon the front cover and back thereof, or upon one of them, the title "Webster's New Standard Dictionary," in manner and form, and in imitation of the titles and words stamped or printed upon your orator's said dictionaries, and in such manner that said dictionaries resemble Dictionaries belonging to your orator's said series of Dictionaries, and might readily be mistaken therefor, or for a later and succeeding edition thereof, by purchasers and users of Dictionaries, and by the public in general, a copy of which said Dictionary is filed herewith as an exhibit, and marked, "Complainant's Exhibit, Defendant's Dictionary." 186

And your orator further shows that said Dictionaries of defendant are not the product, either literary or mechanical, of your orator, or of any of its said predecessors, or of its said corps of editors, authors, or compilers, or any of them, and that said Dictionaries do not belong to either of said series of Abridged and Unabridged Dictionaries of your orator. 187

And your orator further shows that the use of the name "Webster's" as the designating title and description of defendant's said Dictionaries is unnecessary, false, and deceptive in every sense of the term; that Webster is not the author of said Dictionaries; that said dictionaries are not copies or reproductions of any Dictionary which has ever, at any time, borne the name or been described as a "Webster" Dictionary; that said Dictionaries are not copies or reproductions of any of your orator's said Dictionaries, which are copyrighted, owned, and published by your orator ex- 188

Bill of Complaint.

clusively, and are the Dictionaries now known as "Webster's" Dictionaries; that by reason of the said false and deceptive use of the name "Webster's," as the designating title and description of defendant's said book, your orator is informed and believes, and so charges the fact to be, the public have been and are likely to be deceived and led to purchase one or more of defendant's said
 190 Dictionaries in the belief that it is one of the hereinbefore described Dictionaries of your orator, or that it is an edition, or the latest edition of one of the said series of dictionaries of your orator, and, upon information and belief, many purchasers have actually been thus deceived.

And your orator further shows that in the prosecution of its said fraudulent purpose, defendant purchased or otherwise acquired the plates of a certain old dictionary published and copyrighted in to wit, the year 1904, under the name
 191 and title of "The Crown Dictionary," and thereupon defendant changed the name or title thereof, and dropped the words "Crown Dictionary," and substituted in lieu thereof the words "Webster's New Standard Dictionary," and in order to make it appear that its said Dictionary was a new production, defendant also omitted the former copyright notice which contained the date "1904," and substituted in lieu thereof a new
 192 copyright notice bearing the date "1911," and also placed in the publisher's imprint at the foot of the title page the date 1911; that the purpose and effect of these changes was to conceal the true origin and identity of defendant's said Dictionary, and to lead purchasers and the public in general to buy defendant's said Dictionary in the belief that it is a new Dictionary first published in the year 1911, and that it is one of your orator's said series of "Webster's" Dictionaries, or a later or the latest edition thereof, whereas the true fact is

Bill of Complaint.

193

that defendant's said Dictionary is a republication of said old "Crown Dictionary," and is printed from the same plates, or duplicates thereof, except as to a small amount of prefatory and supplemental matter, having no relation to the vocabulary or dictionary proper.

And your orator further shows that defendant's said Dictionaries have been widely advertised and announced under the designating name and description of "Webster's Dictionary" and "Webster's New Standard Dictionary," which said advertisements and announcements are false, ambiguous and misleading, and tend to deceive the public, and to pass off defendant's said Dictionaries as and for the Dictionaries of your orator. 194

And your orator further shows, upon information and belief, that said defendant purposes and threatens to continue to sell and offer for sale its said dictionaries entitled and marked as aforesaid, and to continue to publish and circulate said notices and advertisements in manner and form as aforesaid, and to publish and circulate other similar or equally misleading and damaging notices and advertisements, and is thereby threatening to cause, and is now causing, and necessarily will continue to cause your orator great loss in its said trade; and that purchasers have actually been deceived into buying one or more of the above-entitled books of defendant as and for the genuine book of your orator, or as and for an edition or the latest edition of one of the series of dictionaries published by your orator and its predecessors, as hereinbefore set forth; and that your orator's business and reputation has also been and is likely to be further injured because the Dictionaries so made and sold by defendant are defective and of an inferior quality, both in their literary as well as in their mechanical construction, by reason whereof the long established and 195 196

Bill of Complaint.

well-earned reputation of your orator in those regards has been and is likely to be greatly and permanently damaged, to wit: in the sum of Five Thousand Dollars and upwards.

All in defiance of the rights acquired by and secured to your orator as aforesaid, and to its great and irreparable loss and injury, and by which it has been and is still being and necessarily
 198 will be deprived of great gains and profits which it might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed by said defendant by and through the aforesaid unlawful acts and doings.

VIII.

And your orator further shows unto your Honors that the value of the exclusive right in
 199 your orator to use and employ said word "Webster's" as the whole or a part of the title of said Dictionaries or either of them, and to use the same in publishing, selling and advertising for sale and in marketing said Dictionaries or either of them, exceeds exclusive of interest and costs, the sum of Fifty thousand dollars, and that the damage inflicted upon your orator by reason of the wrongful conduct of the defendant as hereinbefore stated exceeds the sum of Five thousand dollars
 200 exclusive of interest and costs, and that the matter in dispute between your orator and the defendant; exceeds exclusive of interest and costs said sum or value of Five thousand dollars.

And your orator further shows unto your Honors, on information and belief, that said defendant has printed or caused to be printed and sold large numbers of said Dictionaries and has large quantities on hand, which it is now offering for sale and is purposing to continue to offer for

Bill of Complaint.

201

sale, and has made and realized considerable profits and advantage therefrom, but to what extent and how much exactly, your orator does not know, and prays discovery thereof. And your orator says that the publication and sale of said Dictionaries by said defendant and its preparation for and avowed determination to continue the same, in disregard and defiance of the rights of your orator have the effect to and do encourage 202 and induce others to do the same.

IX.

And forasmuch as your orator can have no adequate relief except in this Court, to the end therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may according to its best and utmost knowledge, remembrance, information, and belief, full, true, direct and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged, as well those in regard to which it is herein severally and separately interrogated as also the matters hereinbefore stated in general, but not under oath, the oath being hereby specifically waived, and to account for and pay to your orator the profits by it acquired, and the damages suffered by your orator from the aforesaid unlawful acts; 203

204

And that said defendant, its agents, servants, attorneys, and workmen, and each and every of them be restrained and enjoined provisionally and perpetually by the order and injunction of this Honorable Court from directly or indirectly using the word "Webster's," either alone or in association with any other word, in connection with the publication and sale of its said dictionaries, as the name of, or as descriptive of, such

205

Bill of Complaint.

dictionaries, or in any other manner without clearly distinguishing such dictionaries from the dictionaries of your orator, and especially from selling and offering for sale its said dictionaries under the name or title of "Webster's New Standard Dictionary," and from publishing and circulating any notices or advertisements wherein its said dictionaries are designated by a name or

206 title in which the word Webster or Webster's appears, either alone or in connection with other words or any other notices or advertisements in such manner and form that the natural and probable tendency and effect, thereof will be to deceive and mislead the public into purchasing said dictionaries as and for the genuine dictionaries of your orator, or as and for an edition of, or the latest edition of either of the said series of dictionaries published by your orator and its

207 predecessors, as aforesaid and that the defendant may be decreed to pay the cost of this suit; and that your orator may have such further relief, or such other relief, as to this Honorable Court shall seem meet, and as shall be agreeable to equity.

May it please your Honor to grant unto your crator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this Honorable Court, commanding, enjoining

208 and restraining the said defendant, and its servants, agents, attorneys and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

May it please your Honors to grant your orator the writ of subpoena, issuing out of and under the seal of this Honorable Court, directed to the said defendant the Syndicate Publishing Company commanding it by a certain day, and under a certain penalty, to be and appear in this

Bill of Complaint.

209

Honorable Court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against it.

And your orator will ever pray, &c.

JUDSON & HALE,
Complainant's Solicitors.

WILLIAM B. HALE,
Of Counsel.

210

The defendant is required to answer the interrogatories hereto annexed marked 1 and 2.

JUDSON & HALE,
Complainant's Solicitors.

INTERROGATORIES.

1. Whether or not the defendant, or its agents or servants, or one of them, have since the first day of January, 1911, offered for sale or sold one or more copies of said dictionaries hereinbefore described, entitled "Webster's New Standard Dictionary," either with or without other words, the Dictionaries in question being those a copy of which is filed as an exhibit herein marked: "Complainant's Exhibit, Defendant's Dictionary?" 211

2. How many of said Dictionaries have been sold by said defendant and how many has it now on hand? 212

UNITED STATES OF AMERICA, }
State of Massachusetts, } ss.:
County of Hampden, }

On this 8th day of Nov., 1911, before me personally appeared Orlando M. Baker, to me known to be the President of G. & C. Merriam Co., complainant above named, who being by me duly

213

Bill of Complaint.

sworn, deposes and says that he is the President of the complainant herein. That he has read the foregoing Bill of Comp'laint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why this verification is not made

214 by the complainant is that said complainant is a corporation of which this affiant is an officer, to wit, the President

ORLANDO M. BAKER.

Sworn to before me this 8th)
day of Nov., 1911. }

[SEAL] CHARLES S. CLEAVES,
Notary Public,
Springfield, Mass.

215 (County Clerk's certificate.)

216

Amendment to Bill.

217

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY, a Cor-
poration,
Complainant,

vs.

SYNDICATE PUBLISHING COMPANY, a
Corporation,
Defendant.

Amendment
to bill.

218

Now comes the complainant in the above entitled cause, and amends its bill of complaint herein, as follows, to wit:

FIRST.—Insert at the end of subdivision No. VI, at the foot of page 21 of the bill of complaint as filed herein, the following new matter:

And your orator further shows that by reason of the use aforesaid, the name “Webster’s” has become, and now is the genuine trade-mark of your orator, for its said dictionaries, and that at the time of the adoption of said trade-mark by your orator’s said predecessors, as hereinbefore set forth, no other person, firm or corporation engaged in the manufacture, publication or sale of dictionaries was using the said word “Webster’s” as a trade-mark or as a designation to designate their goods from those of others, to the best of your orator’s knowledge, information, and belief, and that your orator, and its said predecessors had the legal right to appropriate and use said word “Webster’s” as a lawful trade-mark for its said dictionaries.

219.

220

And your orator further shows that heretofore, and prior to the time of the committing of the grievances by defendant hereinafter complained of, and for the better protection of the trade and good-will of your orator in its said dictionaries, your orator adopted and used, and is now using

certain trade-marks consisting of the word "Webster's" in combination and association with other words or features, which said trade-marks your orator caused to be duly registered in the Patent Office of the United States, in accordance with the statute in such case made and provided, as follows, to wit:

222 On September 23rd, 1890, a trade-mark consisting of the words "Webster's International Dictionary," surrounded by a circle, and surmounted by a monogram enclosed in a wreath, a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 1."

223 On March 26, 1895, a trade-mark consisting of the word "Webster's" surrounded by a circle, and surmounted by a monogram, enclosed in a wreath, a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 2."

On January 1, 1907, a trade-mark consisting of the words "Webster's Academic," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 3."

224 On January 1, 1907, a trade-mark consisting of the words "Webster's Common School," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 4."

On January 1, 1907, a trade-mark consisting of the words "Webster's Practical," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 5."

On January 1, 1907, a trade-mark consisting of the words "Webster's High School," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 6."

On January 1, 1907, a trade-mark consisting of

the words "Webster's Condensed," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 7."

On January 8, 1907, a trade-mark consisting of the words "Webster's National Pictorial," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 8."

226

On January 1, 1907, a trade-mark consisting of the words "Webster's Primary," a Patent Office copy of which is hereto annexed, and marked "Complainant's Exhibit, Registered Trade-mark No. 9."

On January 1, 1907, a trade-mark consisting of the words, "Webster's Counting House and Family," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 10."

All of which will more fully and at large appear by certificates of said registrations, or copies thereof, duly certified by the Patent Office and here in court to be produced.

227

SECOND.—Insert in said bill, at the foot of page 25 thereof, and immediately after the words, "to pass off defendant's said dictionaries as and for the dictionaries of your orator," the following new matter, to wit:

And your orator further shows that defendant has unlawfully and in violation of our orator's rights, as aforesaid, appropriated, used, and imitated your orator's said trade-marks upon its said dictionaries, and that defendant has done this by printing, stamping or otherwise affixing to its said dictionaries the word "Webster's" in a manner closely imitating your orator's said registered trademarks or one of them, and which might be readily mistaken therefor by purchasers and the public in general, and the natural and probable tendency and effect of which is to

228

Amendment to Bill.

deceive the public, and to pass off defendant's said dictionaries as and for the dictionaries of your orator."

THIRD.—Insert in the prayer for relief, in paragraph No. IX, of said bill, at about the middle of page 27 thereof, and immediately following the words, "Webster's New Standard Dictionary,"
 230 the following words, to wit:

And from in any manner copying, imitating, or infringing any of your orator's said registered trade-marks.

Dated, New York, November 27, 1911.

JUDSON & HALE,

Solicitors for Complainant.

WILLIAM B. HALE,

Counsel for Complainant.

231 UNITED STATES OF AMERICA,]
 State of Massachusetts, }ss.:
 County of Hampden,]

ORLANDO M. BAKER, being first duly sworn, deposes and says: I am the President of G. & C. Merriam Company, the complainant above named. I have read the foregoing amendment to the bill of complaint herein, and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged
 232 on information and belief, and as to those matters, I believe it to be true. The reason why this verification is not made by the complainant, is that said complainant is a corporation, and not capable of making this affidavit.

ORLANDO M. BAKER.

Subscribed and sworn to before me}
 this 27 of November, 1911. }

CHARLES S. CLEAVES,

[SEAL]

Notary Public,
 Springfield, Mass.

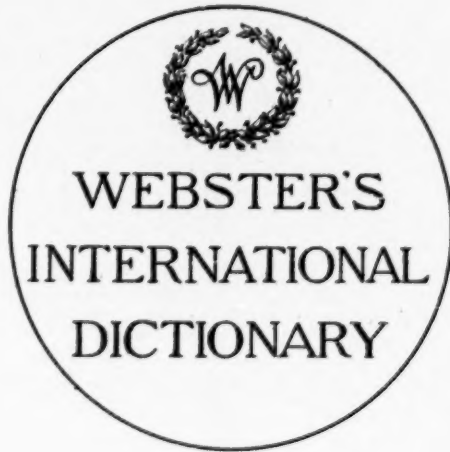
TRADE-MARK.

G. & C. MERRIAM & CO.
DICTIONARIES.

No. 18,449.

Registered Sept. 23, 1890.

(Complainant's Exhibit,
Registered Trade-Mark No. 1.)



Witnesses

Geo. W. Breck

C. E. Sullivan

G. & C. Merriam & Co

Proprietors

By their Attorney

Charles Hudson

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM & CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

STATEMENT and DECLARATION of Trade-Mark No. 18,449, registered September 23, 1890.

Application filed August 15, 1890.

STATEMENT.

To all whom it may concern:

Be it known that we, G. & C. MERRIAM & CO., a firm domiciled and having an office and place of business in the city of Springfield, in the county of Hampden and State of Massachusetts, and composed of HOMER MERRIAM, GEORGE S. MERRIAM, ORLANDO M. BAKER, and H. CURTIS ROWLEY, residing at and citizens of said city of Springfield; BIRDSEYE BLAKEMAN and GEORGE R. CATHCART, residing at and citizens of the city, county, and State of New York; HENRY IVISON and DAVID B. IVISON, residing at and citizens of Rutherford, county of Bergen, and State of New Jersey, and L. HENRY BLAKEMAN, residing at and a citizen of Orange in the county of Essex and State of New Jersey, have adopted for our use a Trade-Mark for books, more especially Dictionaries, of which the following is a full, clear, and exact description.

Our trade-mark consists of an interwoven script cipher composed of the capital letters "N" and "W" partially surrounded by a wreath of flowers, leaves, or the like, the whole surmounting the words "Webster's International Dictionary." These have generally been arranged as shown in the accompanying fac-simile—i. e., in the form of a medallion upon the upper face of which is printed or embossed said interwoven script cipher "N

"W," said cipher being partially surrounded by a wreath of flowers or leaves, beneath which are the letters and words "Webster's International Dictionary," and the whole being placed within a circle, so as to form a medallion, all the other parts of said trade-mark, except the interwoven cipher "N W" and the words "WEBSTER'S INTERNATIONAL," which are essential features, being changeable at pleasure at our option without materially altering the character of our trade-mark.

This trade-mark in its entirety has been used continually in business by us since July 31, 1890.

The class of merchandise to which this trade-mark is appropriated is books, and the particular description of books comprised in such class on which it is used by us is dictionaries.

It has been our practice to stamp or print our said trade-mark on the title-page of the dictionaries and to stamp or emboss the same upon the outside or cover thereof, and also to print the same upon the outside of parcels containing said dictionaries, or to print the same upon tags or labels, which are secured to the goods in any desired manner.

G. & C. MERRIAM & CO.

Witnesses:

CHAS. S. CLEAVES,
A. G. BAKER.

DECLARATION.

State of Massachusetts, county of Hampden,
SS:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is a member of the firm the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm at this time has a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to

deceive; that the trade-mark is used by the said firm in commerce between the United States and foreign nations, and particularly with England, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

ORLANDO M. BAKER.

Sworn and subscribed before me, a notary public, this 7th day of August, 1890.

[L. S.]

EDWARD MORRIS,
Notary Public.

TRADE-MARK.

G. & C. MERRIAM COMPANY.
EDUCATIONAL BOOKS.

No. 26,273.

Registered Mar. 26, 1895.

(Complainant's Exhibit,
Registered Trade-Mark No. 2.)



WEBSTER'S
ACADEMIC
DICTIONARY

WITNESSES:

Paul S. Ober
A. H. Hayes

PROPRIETOR:

G. & C. Merriam Company
BY
Charles A. Johnson

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM COMPANY, OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR EDUCATIONAL BOOKS.

STATEMENT and DECLARATION of Trade-Mark No. 26,273, registered March 26, 1895.

Application filed February 21, 1895.

STATEMENT.

To all whom it may concern:

Be it known that the G. & C. MERRIAM COMPANY, a corporation organized under the laws of Massachusetts, and located in the city of Springfield, county of Hampden, and State of Massachusetts, has adopted for its use a Trade-Mark for Books, of which the following is a full, clear, and exact specification.

The said trade-mark consists in a monogram composed of the capital letters "N" and "W" together with the word "Webster's." These have generally been arranged as shown in the accompanying fac-simile; i. e., in the form of a medallion, upon the face of which is printed or embossed said monogram composed of the interwoven script letters "N W" partially surrounded by a wreath of flowers or leaves beneath which is the word "Webster's" together with such other word or words as may indicate the character of the book upon which it is placed, the whole being placed within a circle so as to produce in general effect the medallion-like appearance. These features are all shown in black in the accompanying drawing but any other design or color may be used or the different features may be differently colored or all or part of the non-essential features may be omitted or changed at pleasure and the mark may be used in conjunction with other matter with-

out materially affecting the character of the trade-mark, the essential features of which are the monogram composed of the letters "N" and "W" together with the word "WEBSTER'S."

This trade-mark in its entirety has been used continuously in business by said company since October, 1890.

The class of merchandise to which this trade-mark is appropriated is books and the particular description of books comprised in such class on which it is used by said company is educational books.

It has been the practice of said company to stamp or print its said trade-mark on the title page of the books and to stamp or emboss the same upon the outside or cover thereof, and also to print the same upon the outside of parcels containing said books or to print the same upon tags or labels.

[L. s.] G. & C. MERRIAM CO.,
By O. M. BAKER,
Treasurer.

Approved: HOMER MERRIAM,
President.

Witnesses:
THOS. H. STOCK,
A. G. BAKER.

DECLARATION.

State of Massachusetts, county of Hampden.

ss:

ORLANDO M. BAKER being duly sworn, deposes and says that he is the treasurer of the corporation named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of the trade-mark therein described; that no other person, firm or corporation has a right to such use either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation

in commerce between the United States and foreign nations or Indian tribes and particularly with the Dominion of Canada and the Hawaiian Islands and Great Britain, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

ORLANDO M. BAKER.

Sworn to and subscribed before me, a notary public, this 13th day of February, 1895.

[L. s.] CHARLES S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,188.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 3.)

WEBSTER'S
ACADEMIC

Proprietor
G. & C. Merriam Co.
by Hall & Heylman

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,188.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 11, 1906. Serial No. 19,430.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[I. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement, that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[I. s.] CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,189.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES.

APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No.4.)

WEBSTER'S

COMMON SCHOOL

Proprietor
G. & C. Merriam Co.
by Hall & Higginson
Attorneys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,189.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 11, 1906. Serial No. 19,432.

STATEMENT.

To all whom it may concern:

Be it known that G & C. MERRIAM Co., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved

O. M. BAKER.
President.

Witnesses:

BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,192.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 17, 1908.

(Complainant's Exhibit,
Registered Trade-Mark No. 5.)

WEBSTER'S
PRACTICAL

Proprietor
G. & C. Merriam Co.
by Hall & Appleman
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,192.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,616.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which said mark is used is dictionaries and reference-

manuals or combined dictionary and reference-manuals.

The trade-mark is usually displayed upon the goods by printing or impressing the same directly upon the books and upon the packages in which the books are arranged.

[L. s.] G. & C. MERRIAM CO.,

By H. C. ROWLEY,
Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
RICHARD S. BETTES.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,193.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES.

APPLICATION FILED MAY 17, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No.6.)

**WEBSTER'S
HIGH SCHOOL**

Proprietor
G. & C. Merriam Co.
by John H. Merriam
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,193.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,617.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,

By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,

President.

Witnesses:

BERTON E. HALE,

ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,

Notary Public.

TRADE-MARK.

No. 59,191.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 17, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 7.)

WEBSTER'S
CONDENSED

Proprietor

G. & C. Merriam Co.

by Hall & Abgleman

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,191.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,615.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference-manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,

By H. C. ROWLEY,
Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
RICHARD S. BETTES.

DECLARATION.

State of Massachusetts, county of Hampden, ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States

of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors, from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

No. 59,473.

TRADE-MARK.

REGISTERED JAN. 8, 1907.

G. & C. MERRIAM CO.
DICTIONARIES.

APPLICATION FILED MAY 11, 1908.

(Complainant's Exhibit,
Registered Trade-Mark No. 8.)

WEBSTER'S
NATIONAL PICTORIAL

Proprietor
G. & C. Merriam Co.
by Hall & Heylman
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,473.

Statement and Declaration.

Registered Jan. 8, 1907.

Application filed May 11, 1906. Serial No. 19,431.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. S.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,

ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. S.] CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,130. .

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES.

APPLICATION FILED MAY 17, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 9.)

WEBSTER'S
PRIMARY

Proprietor
G. & C. Merriam Co.
by Hall & Aldrich

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,130.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,618.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM Co., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,
By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States

of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,187.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No.10 .)

WEBSTERS
COUNTINGHOUSE
AND
FAMILY

Proprietor
G. & C. Merriam Co.
by Hae & Heymann
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,187.

Statement and Declaration.

Registered Jan. 1, 1906.

Application filed May 11, 1906. Serial No. 19,429.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference-manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. S.]

G. & C. MERRIAM CO.

By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,

President.

Witnesses:

BERTON E. HALE,

ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. S.]

CHAS. S. CLÉAVES,

Notary Public.

Replication.

393

DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

VS.

SYNDICATE PUBLISHING COMPANY,
Defendant.Replication.
Eq. 8-162.

394

The replication of the G. & C. Merriam Company, Complainant, to the answer of Syndicate Publishing Company, defendant:

This repliant saving and reserving unto itself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that it doth and will aver, maintain and prove its said Bill of Complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, evasive, untrue and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver maintain and prove as this Honorable Court shall direct, and humbly prays and in and by its Bill it has already prayed.

Feb. 5, 1912.

JUDSON & HALE,

Solicitors for Complainant.

Filed, Feb. 5, 1912.

397

DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

VS.

398

CUPPLES & LEON COMPANY,
Defendant

Equity 8-161.

G. & C. MERRIAM COMPANY,
Complainant,

VS.

399

SYNDICATE PUBLISHING COMPANY,
Defendant.

Equity 8-162.

SPRINGFIELD, MASSACHUSETTS.

February, 23, 1912.

10 o'clock A. M.

APPEARANCES:

400 The Special Examiner, JOHN F. JENNINGS.

WILLIAM B. HALE, Esq.,

For Complainant.

GEORGE F. BEAN, Esq.,

For both Defendants.

Depositions taken on behalf of the complainant for final hearing pursuant to notice annexed, before John F. Jennings, Esq., a Special Examiner of this Court, pursuant to the 67th rule

in equity, as amended, at the office of Messrs. G. & C. Merriam Company in the city of Springfield, Massachusetts, at ten o'clock A. M.

IT IS HEREBY STIPULATED between the counsel for the respective parties that the depositions of the witnesses to be called shall be taken down stenographically by a skilful stenographer appointed by the Special Examiner, and subsequently transcribed and reduced to typewriting. 402

It is further stipulated that the signatures of each and all of the witnesses thus examined shall be and hereby are waived.

CLINTON W. COWLES, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Will you please state your full name, age, residence and occupation? A. Clinton W. Cowles; age, forty-five; residence, 137 Harvard Street, Springfield, Mass.; occupation, general insurance. 403

Q. 2. I believe you are the local representative in Springfield for the National Surety Company of New York and the Connecticut General Life Insurance Company of Hartford, Conn., is that correct? A. Yes, sir.

Q. 3. Are you at all acquainted with Webster's Dictionary? A. Yes, sir. 404

Q. 4. How long have you known of it? A. I have known of it ever since I have known anything in the way of book production.

Q. 5. What is the standing and reputation of Webster's Dictionary as you have known it? A. It is the leading dictionary from my point of view.

Q. 6. And you have so regarded it during the

entire period of your acquaintance with it? A. I have.

Q. 7. Do you know who is and who has been during this period the publisher of the Webster's Dictionary to which you refer? A. Yes; G. & C. Merriam Company of Springfield, Mass.

406 Q. 8. During this period did you know whether or not there were dictionaries published by any other persons under the name of "Webster's Dictionary"? A. I was not aware of any such publication.

Q. 9. Have you recently had occasion to purchase a small Webster's dictionary? A. Yes.

Q. 10. State when and under what circumstances. A. In the late summer or early fall my stenographer called my attention to the need of a new dictionary, and recalling the fact that I had seen Webster's Dictionary advertised at a reduced rate through one of the local newspapers I suggested to the stenographer if she would save the coupons that I would get one of the books advertised, one of the dictionaries advertised, which I did, under the supposition that it was a book published by the G. & C. Merriam of Springfield, Mass. I was aware that the price must be low, but supposed the newspaper people had secured a reduction owing to the purchase of a large quantity.

407 Q. 11. Did you examine this book at or before you bought it? A. I did not. I just took it as it was handed to me over the counter and turned it over to my stenographer under the assumption that it was a bona fide Webster's Dictionary.

408 Q. 12. Upon what if anything did you rely as an assurance that the book was a good and reliable dictionary? A. The word "Webster" being connected with the title led me to suppose it was the real thing.

Q. 13. What effect upon your mind in making

this purchase did the great reputation of the Webster dictionaries which you had previously known, have? A. I bought it sight unseen.

Q. 14. Did you use the book at all after you bought it? A. Not personally; it was used at the office.

Q. 15. Did it prove satisfactory in use? A. Not altogether. I recall hearing my stenographer criticize the publication owing to the lack of some words being in it that would naturally be expected to be there. 410

Q. 16. Do you remember any specific words that were omitted and which you discovered had been omitted? A. I remember a number of instances when comment was made on not being able to find a word: the word "maximum" is the only one I recall.

Q. 17. The word "maximum" is omitted from the book which you bought from the Springfield Union? A. Yes, sir. 411

Q. 18. What newspaper handled and sold this book which you bought in Springfield? A. The Springfield Union.

Q. 19. I show you a book entitled "Webster's New Standard Dictionary," bearing a single copyright notice giving the year 1911, and ask you if that is the identical volume which you purchased under the circumstances stated? A. It is.

MR. HALE: The book identified by the witness is offered in evidence and marked "Complainant's Exhibit—Cowles Dictionary." 412

Q. 20. Except as you have been told do you now know of your own knowledge whether or not this book which you bought from the Springfield Union is or is not a genuine Webster's Dictionary? A. I have no knowledge other than what I have been told.

Q. 21. I show you a book entitled the "Crown Dictionary," which has been marked for identification "Complainant's Exhibit A, referred to by H. W. Baker," and ask you if you ever heard of that book before mentioned in this suit? A. I couldn't say I had. It seems as if the Crown Dictionary was a well known name.

414 Q. 22. When you bought this book from the Springfield Union did you intend to buy this book entitled the "Crown Dictionary" which I show you? A. Most certainly not.

Q. 23. You are the Mr. Cowles who made an affidavit in this case on behalf of the complainant which was verified December 26, 1911? A. Yes, sir.

Q. 24. Since making that affidavit have you been interviewed by anyone on behalf of the defendant with respect thereto? A. No, I have not.

415 CROSS-EXAMINATION by Mr. Bean:

x Q. 25. You say you don't know anything about whether the book you purchased was genuine or not except as you have been told? A. No.

x Q. 26. What should you say would be a genuine Webster's Dictionary? A. A dictionary published by G. & C. Merriam Company of Springfield, Mass.

416 x Q. 27. Regardless of whether it was based upon any work of Noah Webster or not? A. Yes.

x Q. 28. That is to say, you think that the source of publication is the test as to the genuineness of the dictionary rather than its authorship? A. I have no knowledge of the older editions but since I recall knowing anything about the Webster dictionary it has been published here in Massachusetts by G. & C. Merriam Company or its early company, the Merriam Company.

x Q. 29. Would you say that a dictionary published by some one else than the Merriam Com-

pany and based upon the work of Noah Webster, was not genuine?

Mr. HALE: Objected to as calling for the conclusion of the witness.

A. I would say it would be rank injustice to the Merriam Company.

MR. BEAN: The answer is objected to because it is not responsive. 418

x Q. 30. I repeat the question: whether a dictionary based upon Noah Webster and published by some other house than the Merriam Company's would in your opinion be or not be genuine? A. I would say would not be genuine.

MR. HALE: The same objection.

x Q. 31. You think it would not be genuine if it were in fact based on the work of Noah Webster? 419

MR. HALE: Objected to as mere repetition.

A. A book published at the present time I would not consider genuine.

x Q. 32. You have lived in Springfield all your life or since you were a boy? A. About eight years.

x Q. 33. As a matter of fact you have not known anything about whether dictionaries with "Webster" in their titles were published by anybody else than the Merriam Company or not until your attention has been called to it in this case, have you? A. I have had no such knowledge. 420

x Q. 34. You have had no knowledge of previous litigation regarding the use of the name "Webster" in the titles of dictionaries, have you? A I cannot say positively. It occurs to me I have heard there has been some litigation at some time during the last ten years.

421

Charles D. Bond—Direct.

x Q. 35. You don't know the results of that litigation? A. I do not.

x Q. 36. You know nothing about whether the Merriam Company is and and was at the time you purchased this dictionary restrained by an order of a circuit court of the United States from claiming the exclusive right to the name "Webster"?

422

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as not correctly stating the decree of the court referred to.

A. I have no knowledge.

x Q. 37. You say you didn't see this dictionary which you bought before you bought it? A. I did not, nor any other like it.

DEPOSITION CLOSED.

423 (Signature waived.)

CHARLES D. BOND, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

424 Q. 1. Please state your full name, age, residence and occupation? A. Charles D. Bond; age, fifty-one; residence, 26 Mulberry Street, Springfield, Mass.; occupation, a magazine specialist, I am in the general subscription business.

Q. 2. Have you been more or less familiar with the Webster dictionaries in times past? A. I have.

Q. 3. How long have you known of Webster dictionaries? A. Ever since I was a boy; I don't know just how many years.

Q. 4. Do you know who is the publisher of the

Webster dictionaries to which you refer? A. G. & C. Merriam Company.

Q. 5. And they have always been the publishers of Webster's Dictionary since you have known it? A. They have.

Q. 6. How long have you known of the Merriams as the publishers of Webster's Dictionary? A. Forty years.

Q. 7. What has been your understanding of the reputation and authority of Webster's Dictionary as a work of reference during all this period? A. I think it has the highest standing; I always regarded it as such. 426

Q. 8. On or about October 11, 1909, did you consider a proposition to supply Success Magazine to subscribers in connection with a premium dictionary? A. I did.

Q. 9. What was the name of the dictionary offered as a premium with Success Magazine? A. Webster's Inter-Collegiate Dictionary. 427

Q. 10. Who did you think was the publisher of the Webster's Inter-Collegiate Dictionary thus offered as a premium? A. G. & C. Merriam Company.

Q. 11. What made you believe that? A. I had not known of any other dictionary publisher of that name, that is, any other publisher publishing a dictionary by that title.

Q. 12. By what name? A. Webster's Inter-Collegiate Dictionary. 428

Q. 13. What part of the title made you think the Merriams were the publishers of that book? A. "Webster's."

Q. 14. Having undertaken to secure subscriptions for Success Magazine on this premium basis, did you secure any and if so what did you do? A. I secured one.

Q. 15. Do you remember the name of the sub-

scriber? A. Dr. Boynton, of Springfield, with offices in the Whitney building.

Q. 16. Did you offer this book, Webster's Inter-Collegiate Dictionary, to Dr. Boynton as being a genuine Webster's Dictionary published by the G. & C. Merriam Company, or how did you represent it to him? A. I just offered it as Webster's Dictionary in connection with the premium of Success Magazine.

430

Q. 17. I show you a book entitled the "Crown Dictionary," marked for identification in this case as "Complainant's Exhibit A, referred to by H. W. Baker," and ask you if you ever saw or heard of that book before? A. Not before.

CROSS-EXAMINATION by Mr. Bean:

x Q. 18. What is your business? A. The subscription business, magazine specialist.

431 x Q. 19. Have you been at that business a good many years? A. A number of years, not many, but several.

x Q. 20. About how long have you lived in Springfield? A. About forty-five years.

x Q. 21. You have an office in connection with your subscription business? A. Only at the house.

x Q. 22. Have you ever been employed in any connection by the G. & C. Merriam Company? A. Never.

432 x Q. 23. You say you received a proposition to supply Webster's Inter-Collegiate Dictionary as a premium to subscribers to Success Magazine. Did you receive that proposition in the form of a letter from the Success Magazine people? A. They wrote me and they sent me circulars.

x Q. 24. Before you began to solicit subscribers did you see the dictionary which was offered by them as a premium? A. No, I had no copy of it.

x Q. 25. You say you got one subscription? A. Yes, sir.

x Q. 26. You have never seen that dictionary, that is, Webster's Inter-Collegiate? A. Unless I have seen them in New York, I really don't remember.

x Q. 27. Do you know who publishes that dictionary, the Inter-Collegiate? A. Yes.

x Q. 28. Who? A. I suppose the Syndicate Publishing Company.

x Q. 29. What makes you suppose so? A. I understood so here. 434

x Q. 30. Would it surprise you to know that the Webster Inter-Collegiate Dictionary is published by the A. J. Saalfeld Company of Akron, Ohio? A. Yes, that would surprise me.

x Q. 31. Do you know what the size of Webster's Inter-Collegiate Dictionary is, whether abridged or unabridged? A. I don't know.

x Q. 32. Were you of the impression that Webster's Inter-Collegiate Dictionary was a dictionary which was in litigation in this suit in which you are now testifying? A. I did not; I did not know anything about it. 435.

x Q. 33. Do you know as a matter of fact what dictionary is the subject of litigation in this suit in which you are testifying?

MR. HALE: Objected to as immaterial and as obviously calling for hearsay.

A. I supposed it was Webster's Inter-Collegiate Dictionary. 436

x Q. 34. I understood you to say in answer to Mr. Hale's question on direct examination that what led you to think it was a dictionary published by the Merriam Company was the name "Webster's," is that right? A. Yes, sir.

x Q. 35. Up to that time when you sold subscriptions to Success Magazine you didn't know anything about whether any other house than the

Merriam Company published Webster's Dictionaries or not? A. No.

x Q. 36. You had lived in Springfield about all your life and during that time had known that the Merriam Company had published Webster dictionaries and so you supposed they published all Webster's dictionaries that were published, is that right? A. That is right.

438 x Q. 37. So far as you are concerned you don't know that you ever saw a copy of Webster's New Illustrated Dictionary, or Webster's New Standard Dictionary, or Webster's New Century Dictionary, which are the subject of litigation in these suits? A. No.

x Q. 38. Have you sold dictionaries in your business as a subscription agent? A. Yes.

x Q. 39. As premiums with magazines or independently? A. As premiums with magazines.

439 x Q. 40. Have all the dictionaries which you have so sold as premiums been dictionaries published by the Merriam Company, except this one? A. No.

x Q. 41. What other? A. Funk & Wagnalls.

x Q. 42. The Standard? A. Yes, sir.

x Q. 43. But to a large extent the dictionaries which you sold as premiums have been dictionaries published by the Merriam Company? A. No.

440 x Q. 44. Have you to some extent sold their dictionaries? A. One.

x Q. 45. One copy? A. I think that is all.

x Q. 46. Then you have not done a great deal in the dictionary business in connection with your subscription business? A. Very little.

x Q. 47. All this occurrence to which you testified amounts to is you learned by the circulars, etc., which you received that Webster's Inter-Collegiate Dictionary was offered as a premium and you supposed it was published by the Mer-

Joseph C. Cooper—Direct.

441

riam Company and you asked no questions of anybody one way or the other and you secured one subscription to Success Magazine carrying as a premium that dictionary? A. I did.

x Q. 48. You don't know whether these other dictionaries which I have mentioned as in litigation in these suits, are abridged or unabridged? A. I do not.

442

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 49. You said you had sold one copy of a Merriam dictionary as a premium, are you referring to the book sold to Dr. Boynton? A. Yes.

Re-D. Q. 50. You have since ascertained that that was not a Merriam book? A. Yes.

Re-D. Q. 51. It was the book called Webster's Inter-Collegiate Dictionary? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. Bean:

443

Re x Q. 52. Then you never have sold a Merriam Webster's Dictionary? A. No.

(Signature Waived.)

DEPOSITION CLOSED.

JOSEPH C. COOPER, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows: 444

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Joseph C. Cooper; 54 Buckingham Street, Springfield; bank clerk; twenty-four years old.

Q. 2. Have you been more or less acquainted with Webster's dictionaries in times past? A. I

have always used it in school here, they have always used it here; and of course we have had it in the house all the time.

Q. 3. For about how many years have you been so acquainted with Webster's Dictionary? A. You might say ever since I started school.

Q. 4. What has been your understanding of the reputation and authority of Webster's dictionaries as reference books during this period? A. I have thought it to be the standard or the schools here wouldn't have taken it up and used it so extensively as they have, and it is pretty well known all over; I don't know of any other really good one.

Q. 5. Webster's Dictionary is used in the schools of Springfield? A. Yes, it was; I suppose it is now.

Q. 6. Were you educated in the Springfield public schools? A. Yes, sir.

Q. 7. In or about the month of September, 1911, did you purchase a dictionary? A. I think it was about that time.

Q. 8. From whom did you purchase this dictionary? A. I got it from a clerk in the Union office.

Q. 9. The Springfield Union is a newspaper of this city? A. Yes, sir.

Q. 10. Please state how you came to buy this book from the Springfield Union and give all the particulars as to what you thought you were getting and why you bought this book? A. A friend of mine told me the offer was in the paper and they had already gotten one; seeing the advertisement in the Springfield Union I took my friend's advice and got the coupons thereby giving me a chance to get the book. I understood that it was G. & C. Merriam's dictionary that they were offering and I thought it would be a good thing to have a handy size and all, so I got it.

Q. 11. The Springfield Union was advertising a Webster's Dictionary to be given for coupons and a cash payment, is that correct? A. Yes, sir.

Q. 12. What made you think that the book offered by the Springfield Union was one of the dictionaries published by the Merriams? A. I hadn't anything else to lead me to think otherwise, for the simple reason it said Webster's International Dictionary as I remember, and the Merriam being the one I knew of, and in fact I guess it is the only company, that gets out Webster's International, I took it for granted that it was the Merriams making the offer through the Springfield Union. 450

Q. 13. Are you certain that the book advertised in the Springfield Union was Webster's International Dictionary? A. I am not sure; that is, I didn't look at the advertisement very much. The coupons were cut out and given to me and I took them down and the party that told me of them said that it was. I didn't see the book at all before hand, and I couldn't say as to that. 451

Q. 14. I show you a book which has been offered in evidence and marked "Complainant's Exhibit—Cowles dictionary," which the witness Clinton W. Cowles purchased from the Springfield Union, and ask you if that is the same as the book you purchased? A. Yes, I guess that is the same book all the way through, I see some similar things in it. 452

Q. 15. The title of this book is Webster's New Standard Dictionary, was that the title of the book you purchased from the Springfield Union? A. Yes, sir.

Q. 16. I presume you knew that you were not obtaining the large unabridged Webster's Dictionary published by the Merriams? A. Yes, sir.

Q. 17. What connection did you think there was between this small or abridged dictionary and

the large unabridged Webster's dictionaries published by the Merriams? A. I thought probably it was some special thing that they had gotten out as sort of an advertisement,—not necessarily an advertisement because I don't think they need to advertise, but they are always working in some of these deals around,—not the Merriam Company exactly, but different companies. I didn't know

454 but this was something in that order.

Q. 18. Did the low price at which the book was offered by the Springfield Union attract your attention at all? A. Yes, sir.

Q. 19. Did you wonder how the book could be offered at the price stated?

MR. BEAN: I object to the question as immaterial.

A. I thought the Union had some deal on with
455 the Merriam Company whereby they were getting along all right and the company were too and at the same time it was an advertisement for both.

Q. 20. How long have you known the Merriams as being the publishers of the Webster dictionaries to which you have referred? A. As long as I can remember, within my recollection of study.

Q. 21. Before the matter was mentioned in this suit did you know that there were any concerns other than the Merriams who published dictionaries under the name of Webster's Dictionary? A.
459 No, sir.

Q. 22. Did you examine this book which you bought from the Springfield Union at or before the time you purchased it? A. No, sir.—I will take that back. I didn't examine it closely, that is, I looked it over. I saw the copy this friend of mine had I just looked it over, looked it through, not very carefully, but enough to give me a little idea.

Q. 23. Are you an expert on dictionaries? A. Not exactly.

Q. 24. Upon what did you rely, if anything, as an assurance that this book which you bought was an accurate, reliable dictionary worth buying?

A. Upon the name "Webster," that first came in my head, probably from Webster's International Dictionary and associating that with the Merriams, I thought if it was not the large dictionary it would be up to date to a certain extent, as far as they could make it so. 458

Q. 25. Do you know whether Webster's International Dictionary to which you have referred is a large unabridged dictionary or a small or abridged dictionary? A. I always knew of the large, I never knew—oh, yes, I did too, because they had the small one in the schools, so I judge they published small ones as well as they did the large unabridged. The ones in school were about that size, not quite as large possibly. 459

Q. 26. Did you think you were obtaining the Webster's dictionaries such as are used in the schools and to which you have referred? A. No, but as I say I saw the book; it is not the same, but very nearly the same; it is the same general style.

CROSS EXAMINATION by Mr. Bean:

x Q. 27. Mr. Hale asked if you thought you were getting an accurate, reliable dictionary worth buying when you bought this book and you answered that you did. Do you now think that you are not getting an accurate, reliable dictionary worth buying? A. Not being a good judge, not an expert on dictionaries I cannot say as to that, but I think perhaps it is worth the money, ninety-eight cents, that I paid for it. 460

x Q. 28. Did you examine the title page of the dictionary you bought? A. No, sir.

x Q. 29. Did you look to see who published it?
A No, I didn't look at that.

x Q. 30. Do you know now who published it?
A. I do not.

x Q. 31. After you got the dictionary did you examine it at all? A. No, not closely. I looked at it when the matter was brought up.

x Q. 32. Brought up by whom? A. When Mr.
462 Baker spoke to me on the matter.

x Q. 33. Who is Mr. Baker? A. The man connected with the G & C. Merriam Company.

x Q. 34. What did he say to you? A. He asked me if I was satisfied with the book and if I thought it was the Webster's International Dictionary when I bought it.

x Q. 35. What did you say to him? A. I said that I thought it was.

x Q. 36. What did you say to him as to being
463 satisfied? A. I said the same as I said here. I said in a way—probably as much as I would ever use it it would be all right.

x Q. 37. Did he tell you you had not got a genuine Webster's Dictionary? A. No, sir.

x Q. 38. What did he tell you? A. I don't know as he really did say what it was; I don't remember that he did.

x Q. 39. Didn't he tell you the Merriam Company were the only publishers of the genuine Webster's Dictionary? A. I don't think he did, no, sir.
464

x Q. 40. Did he tell you you had got a spurious or a defective or a non-genuine dictionary? A. I don't think he did either; I don't think he spoke about it at all.

x Q. 41. You don't know now you didn't get a genuine Webster's Dictionary? A. Yes, I do.

x Q. 42. How? A. I know; if I had this wouldn't have come up.

x Q. 43. What wouldn't have come up? A. My being here.

x Q. 44. Do you know when Noah Webster lived or died? A. No, sir.

x Q. 45. You don't think he is alive now, do you? A. I do not.

x Q. 46. Did you think he was the author of the dictionary you got? A. No, sir.

x Q. 47. You think he is the author of the dictionaries that the Merriam Company sell bearing the name Webster? A. Not exactly the author; they use his name; probably he was connected with it some time or other. 466

x Q. 48. Have you ever read upon the title page of the dictionary you purchased the statement that it is based upon the unabridged dictionary of the English language by Noah Webster? A. No, sir.

x Q. 49. You find that language, do you not, upon the Cowles book (showing) which you have identified and like the one you purchased? A. Yes, sir.

x Q. 50. If a dictionary is based upon the unabridged dictionary of Noah Webster, do you think it is necessary to be published by the Merriam Company to be a genuine Webster dictionary. 467

MR. HALE: Objected to as calling for the opinion of the witness.

A. Not knowing of any other company publishing under the name of Webster I thought that it was necessary.

x Q. 51. Up to the time you purchased this dictionary you thought all dictionaries bearing the name "Webster" in their title were published by the Merriam Company, did you not? A. Yes, sir. 468

x Q. 52. Supposing some other publishing house or houses published dictionaries with the name "Webster" in their titles and based upon the unabridged dictionary of Noah Webster, what would you say as to such a dictionary being as genuine as other dictionaries published by the Merriam

469

Joseph C. Cooper.—Re-direct.

Company and also based upon the work of Noah Webster?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for the opinion of the witness as to a matter upon which he is not qualified as an expert and also upon a matter of law which is for the court.

470

A. I don't see—in a way, possibly some other company might have as genuine a book if they are up to date.

x Q. 53. You have always lived in Springfield, have you not, and since you were a boy in the schools here have known that the Merriam Company published Webster dictionaries and so supposed that they published all Webster dictionaries? A. Yes, sir.

471

x Q. 54. If you had examined the title page of the dictionary which you purchased you would have known, would you not, that it was not published by the Merriam Company?

MR. HALE: Objected to as hypothetical in form and calling for a guess.

A. Yes, sir.

x Q. 55. Would you, if you had so examined the title page, been deceived? A. No, sir, I don't think I would.

472

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 56. You have spoken of Webster's International Dictionary saying that that was the name advertised and that was the book which you expected to get. Are you not confused somewhat, and to aid you I show you a copy of Webster's International Dictionary, which is a very large unabridged dictionary? A. Yes; I didn't mean

the International; I meant Webster's Dictionary published by G. & C. Merriam Company.

Re-D. Q. 57. And when you said that Mr. Baker asked you whether you thought you had obtained Webster's International Dictionary, you were mistaken in saying that he mentioned Webster's International Dictionary, were you not? A. Yes, sir.

Re-D. Q. 58. What according to your best recollection now, as nearly as you can give it, was the question Mr. Baker asked you? A. I should say, "Did you think that the book that you got from the Springfield Union was a dictionary published by the G. & C. Merriam Company as their standard "Webster's Dictionary?" 474

Re-D. Q. 59. You are the same Mr. Cooper who has heretofore made an affidavit for the complainant in this case? A. Yes, sir.

Re-D. Q. 60. Since that time have you been approached by any one purporting to represent the defendant or the Springfield Union? A. There was a man in representing the Springfield Union, yes, sir. 475

Re-D. Q. 61. When? A. I should say two or three weeks ago.

Re-D. Q. 62. How often did he call? A. Once.

Re-D. Q. 63. What was his name? A. I don't know.

Re-D. Q. 64. Did he give his name? A. Yes, sir, he did. 476

Re-D. Q. 65. What did he say to you? A. He asked me if I was satisfied in the purchasing of the dictionary, that is, that I didn't begrudge the ninety-eight cents, if I thought it was worth the money.

Re-D. Q. 66. What else did he say to you? A. That is about all he asked me. He didn't ask me but one or two questions. That was the main

idea: he wanted to know if I was satisfied, said if I was not they were willing to refund the money.

Re-D. Q. 67. Did he ask you to make an affidavit for the defendant? A. No, sir.

Re-D. Q. 68. Did he try to convince you that you had obtained a genuine Webster's Dictionary?

A. No, sir.

(Signature waived.)

DEPOSITION CLOSED.

ROBERT C. MUNROE, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

479 Q. 1. What is your full name, age, residence and occupation? A. Robert C. Munroe; age thirty-two; residence, Longmeadow, Massachusetts; occupation, advertising.

Q. 2. What is your position with the Merriam Company? A. Clerk.

Q. 3. Have you charge of any of the advertising for the G. & C. Merriam Company, the complainant in this case? A. Yes, sir.

Q. 4. What branch of it? A. I order the advertising.

480 Q. 5. Does the complainant advertise in the newspapers of this country? A. Yes.

Q. 6. Do you furnish such newspapers with electrotypes cuts of your side of the advertisements? A. Yes, sir.

Q. 7. After the advertisement has run its prescribed course, are these cuts sometimes returned to the complainant? A. Yes, sir.

Q. 8. I show you an electrotypes cut of a dictionary and ask you if you recognize it? A. Yes, sir.

Q. 9. When and under what circumstances did you first receive that electrotype cut? A. About two months ago; it was one of three cuts sent to us, two of which were our cuts.

Q. 10. I show you two electrotype cuts advertising—one, the old and one Webster's New International Dictionary, and ask you if they are the cuts to which you refer? A. Yes, sir.

Q. 11. From whom were these three cuts returned to you? A. Better Fruit Publishing Co., Hood River, Oregon. 492

Q. 12. Did the complainant advertise in the publication of that concern? A. Yes.

Q. 13. And furnished it with the two cuts of complainant's dictionary which you have identified? A. Yes.

Q. 14. Were all these three cuts returned in one package? A. Yes.

Q. 15. I show you the first cut identified by you and ask you to state what it is? A. It is a cut of Webster's New Illustrated Dictionary. 493

Q. 16. Is that one of complainant's publications? A. No.

Q. 17. Did you supply the Better Fruit Publishing Co. with that cut? A. No.

Q. 18. How, if you know, did it come to be sent to you? A. On the supposition that it was one of our cuts, bearing the name of Webster.

MR. BEAN: I object. It is apparent the witness cannot tell what the supposition of the party was who sent it to the Merriam Company. 494

MR. HALE: The three cuts identified by the witness are offered in evidence and marked respectively: "Complainant's Exhibit—Cut of defendant's dictionary sent to complainant"; "Complainant's Exhibit—Cut No. 1, returned to complainant"; and "Complainant's Exhibit—Cut No. 2, returned to complainant."

485

Harris W. Baker—Direct.

CROSS-EXAMINATION by Mr. Bean:

x Q. 19. All you know about the return of these cuts is that they came to you in one package and that two of them are cuts of dictionaries which the Merriam Company publishes and the other one is a cut bearing the name of a dictionary which the Merriam Company does not publish, is that right? A. Yes.

486

x Q. 20. This is the only instance in your recollection where a cut has come back to you which was not a cut advertising one of your dictionaries, is it, during your connection with the advertising department of the Merriam Company? A. Yes, sir.

DEPOSITION CLOSED.

(Signature waived.)

487

HARRIS W. BAKER, a witness called on behalf of the complainant having been first duly cautioned and sworn, testified as follows:

IT IS HEREBY STIPULATED between the attorneys for the respective parties that the affidavit of Harris W. Baker verified in this cause on the first day of January, 1912, shall be inserted in the record at this point with the same force and effect as though the witness had been examined at large by way of question and answer on behalf of the

488

complainant, but subject to further examination and cross examination.

Affidavit of Harris W. Baker.

STATE OF MASSACHUSETTS, }
County of Hampden, } ss.:

HARRIS W. BAKER, being duly sworn, deposes and says:

I reside at 108 Harvard Street, Springfield, Mass., and am employed by the G. & C. Merriam

Company of that city. I have compared a copy of the Crown Dictionary of the English language, published by The Christian Herald, New York City, produced herewith marked "Exhibit A," and by my name, with a copy of Webster's New Standard Dictionary published by the Syndicate Publishing Company, produced herewith marked "Exhibit B" and by my name, and with Webster's New Century Dictionary, published by Cupples & Leon Company, produced herewith marked "Exhibit C" and by my name. The purpose of my comparison was to ascertain whether these books were printed from the same plates, and as a result of these comparisons I assert that they were printed from the same plates with but slight changes or additions. 490

In comparing Webster's New Standard Dictionary (Exhibit B), hereinafter called the New Standard, with the Crown Dictionary (Exhibit A), I began at the beginning of the letter "A" in both cases and compared the first ten pages. The first page in the Crown Dictionary is not numbered; but had it a number, it would be No. 9. The pages in the New Standard were not numbered at all, but for the sake of comparison I have numbered them beginning with No. 9 on the page where the main vocabulary of the dictionary begins. In addition to the first ten pages mentioned above, my comparison of these two books has covered the ten pages beginning with each of the following pages: 109, 209, 309, 409, 509, 609, 709, 809, making a total of ninety pages. The comparison of these ninety pages shows that they are exactly the same, with the exception of thirteen words having been omitted and thirteen other words substituted for them, the words substituted being largely of recent origin, such as cordite, esperanto, expansionist, hobble skirt, pneumatic tire, etc. I have also 491 492

found in the pages examined a number of broken type, these broken type appearing exactly the same in both books. In addition to this, there are other errors which appear in both books, such as on page 12, under the definition of abridge, the word "epitomize" appears without the first "i," making it "eptomize." On page 15 the word "county" is used for "country" in the definition of the word *accent*. I have further compared the letters at the top of each page, which indicate the scope of the page, and find that the scope of each page in the New Standard is the same as the scope of the corresponding page in the Crown Dictionary, with the exception of the fact that words have been added in the New Standard at the last page of each letter, which in some cases alter the letters which indicate the scope of the page. This led to an examination of the final pages of all letters, and I find that on these twenty-six last pages seventy-five words have been added and five new words have been substituted for other words.

Following the same percentage of changes in the 850 pages which constitute the vocabulary of this dictionary, exclusive of the twenty-six pages which comprise the end pages of each letter, the total changes in the new Standard from the Crown would be about 125 words, which with the seventy-five words added and five words changed on the pages at the end of each letter, would make a total of about 200 words changed in the entire book, about 125 of which are substitutions and not additions. This calculation is based on the entire book containing about 31,000 words, as ninety pages by actual count show 3,202 words. These are the ninety pages mentioned above as being under comparison.

In comparing the Crown Dictionary (Exhibit A) with Webster's New Century Dictionary (Ex-

hibit C) hereinafter called the New Century, I first ascertained that the broken type and other errors mentioned as appearing identical in the Crown and New Standard are also all reproduced in the New Century. I have also compared the twenty-six pages representing the ends of the twenty-six letters of the alphabet of the New Century and find that these have not been changed as in the New Standard but are identical with the Crown. I have compared ninety pages in the New Century with the Crown and find only four changes in these ninety pages, these changes being the substitution of new words for other words and the changing of one definition. The definition changed is under the word "Aeroplane" and the words substituted are "hook worm," "hydroplane" and "Triplane." The ninety pages compared in these two books were ten pages beginning with each of the following pages: 19, 119, 219, 319, 419, 519, 619, 719, 819. On page 117 I find that the word "biplane" has been added to the New Century, it not appearing in the Crown. This word has also been added on page 117 of the New Standard, but in this case it is out of its proper alphabetical order. In both the New Century and the new Standard a word has been left out to make room for the word "biplane."

498

499.

In the New Century Dictionary I examined the ninety pages stated above, the twenty-six pages comprising the end of the vocabulary under each letter and also page 117. This would make a total of 117 pages examined, in which five changes from the Crown Dictionary have been made. On this basis, the total number of changes made from the Crown Dictionary in the New Standard would be less than 40. None of the thirteen changes which appear in the New Standard appear in the

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501

Harris W. Baker—Direct.

New Century with the exception of the word "bi-plane."

HARRIS W. BAKER.

Subscribed to and sworn to before me{
this first day of January, 1912. }

CHARLES S. CLEAVES,

[SEAL]

Notary Public,

Springfield, Mass.

502

MR. BEAN: Counsel for defendant objects to said deposition as irrelevant and immaterial and as not relating to any issue in this cause.

DIRECT EXAMINATION by Mr. Hale:

503

Q. 1. In your examination and comparison of these dictionaries did you make any special search to discover errors or omissions or other matter which might be criticized in the defendant's book?
A. No.

Q. 2. Did you however discover any errors or omissions in the defendant book? A. I did.

Q. 3. Can you point out some of them? A. On page 12, under the definition of the word *abridge*, the word "eptomize" appears where "epitomize" is intended.

504

On page 15, under the definition of the word *accent* the word "county" is used where "country" should be used.

On page 211 in the definition of the word *constrictive* the word "which" is apparently omitted and the definition reads "that constricts," and it should be "that which constricts."

On page 213, the definition of *contribute* reads "to give to some common stock." I should say it has no meaning at all, this definition as it is given; it does not define the word to me.

On page 510, under the word *malaga*, the fact of this being a kind of grape is omitted.

On page 116, under the word *billiards* the side of the table is given as twelve feet by six, which is not the standard size in this country but which is that commonly used in England.

On page 313 the definition of *examine* is given "to test orally or by papers," here "to test orally or by written examination" should be used, to my mind. 506

Q. 4. Did you observe, and if so will you point out, some instance in which the words appearing in the Crown Dictionary have been cut out and other and more recent words have been substituted?

MR. BEAN: Objected to as asking for information which is irrelevant and immaterial and as not bearing on any issue in the case.

507

A. Esperanto is substituted for "esplanade."

Eureka is substituted for "European."

Past participle of "play" and its definition is omitted and *player piano* substituted.

Plum cot is substituted for "plume," verb transitive.

Pneumatic tire is substituted for "pneumatology."

Porgee is omitted and the definition of "porgy" is increased.

508

Town car is substituted for part of the definition of "town."

Serumtherapy is substituted for "serval" and part of the definition of "servant."

Hangar does not appear in the Crown Dictionary but the word "handspike" does. *Hangar* appears in the New Standard and "handspike" does not. *Hangar* appears in the New Century and "handspike" does not.

Q. 5. In each one of these instances the word omitted and the word substituted invariably appear upon the same page, do they not? A. Yes.

Q. 6. And the obvious purpose of the omission is to make room for the insertion of the more recent word? A. Yes, sir.

Q. 7. From your experience in the book business can you say those changes were made by way of
510 what are termed plate corrections? A. Yes.

Q. 8. Please examine these dictionaries and see if the word "hobbledehoy" has not been cut out of the Crown Dictionary to make place for the insertion "hobble skirt"? A. "Hobbledehoy" appears in the Crown Dictionary but is omitted in the New Standard, the word *hobble skirt* being substituted.

Q. 9. What is the case in the Webster's New Century? A. "Hobbledehoy" appears in the Century and "Hobble skirt" does not appear.

511 MR. BEAN: The answer is objected to as dealing with the respective literary merits of the several dictionaries, which merits are not issues in the case.

CROSS-EXAMINATION by Mr. Bean:

x Q. 10. Your company is the publisher of Webster's Condensed Dictionary, is it not? A. Yes, sir.

x Q. 11. Do the Reilly & Britton Company of
512 Chicago distribute said dictionaries with their imprint on the title page along with that of G. & C. Merriam Company, under some business arrangement with the Merriam Company? A. They do.

x Q. 12. Do you know whether or not that dictionary as thus distributed by the Reilly & Britton Company has upon the back of its cover in gilt letters "Twentieth Century Edition," with some other words?

MR. HALE: I object on the ground that the books will speak for themselves and that this is not the best evidence.

A. I am not particularly familiar with their various forms of dictionaries that they put out; I think I have seen that, but I am not sure; I wouldn't want to swear to any of it.

x Q. 13. Looking at a copy of Webster's Condensed Dictionary bearing your imprint and that of the Reilly & Britton Company upon its title page and the latest copyright notice by the Merriam Company, 1909, upon the back of its title page, will you tell me whether you find therein the word "hobble skirt" or the word "hangar"? 514

MR. HALE: Objected to as irrelevant and immaterial and not the best evidence and because the merits of complainant's book are not in issue. 515.

A. I do not.

x Q. 14. What do you call that part of the locomotive from which the smoke issues? A. The smoke stack.

x Q. 15. Will you examine the cut of a locomotive in said Webster's Condensed Dictionary and tell me what that part of a locomotive is therein called? A. Chimney.

x Q. 16. You made a somewhat extended comparison of the Crown Dictionary and the Webster's New Standard and the Webster's New Century dictionaries in preparation for the affidavit which you have made in this case and for the testimony which you are now giving? 516.

MR. HALE: Objected to as calling for a conclusion, the witness having already testified to the extent of his comparison and the purpose, which related solely to the

question of substantial identity between the books compared.

A. I examined about ten per cent. of each book.

x Q. 17. That was about ninety pages of each?

A. Yes, sir.

x Q. 18. And in those 90 pages you found 13 words omitted and 13 words substituted therefor in the New Standard Dictionary? A. Yes, sir.

x Q. 19. And you found four such changes as between the Crown and New Century? A. Yes, sir.

x Q. 20. Beside this you found the word "biplane" added in the New Century which did not appear in the Crown? A. Yes.

x Q. 21. Do you find the word "biplane" in Webster's Condensed Dictionary to which I have referred? A. No.

519 x Q. 22. I observe that in your affidavit which you executed on January 1, 1912, you state near the end that on the basis of your examination the total number of changes made from the Crown Dictionary to the New Standard would be less than forty. Did you mean the New Standard? A. The Standard should be Century, making it read "New Century."

520 x Q. 23. Your examination and comparison of 90 pages in each of the dictionaries to which you have referred was done with a view solely, was it not, to discovering how nearly alike Webster's New Standard Dictionary and Webster's New Century Dictionary were to the Crown Dictionary? A. The purpose of my examination was to see if they were printed from the same plates.

x Q. 24. Your conclusion is that they were with the occasional substitution of a word for another by the removal of that part of the plate necessary to make such a change? A. Yes.

x Q. 25. So that in your opinion each of those

two dictionaries is substantially the same dictionary as the Crown Dictionary. Can you tell me whether Webster's Condensed Dictionary to which I have referred and which bears upon the back of its title page the copyrights in 1884 by G. & C. Merriam & Company and in 1906 and 1909 of G. & C. Merriam Company, is substantially the same dictionary which was first published in 1884 by G. & C. Merriam & Company 522 under that title?

MR. HALE: Objected to upon the ground that the books must speak for themselves and that there is no evidence that this witness had anything to do with the preparation of said books or is at all familiar with their contents.

A. I cannot.

x Q. 26. How long have you been with the G. & 523 C. Merriam Company? A. About seven years.

x Q. 27. Do you know whether there has been any revision of Webster's Condensed Dictionary in that period? A. I do not.

x Q. 28. Said Webster's Condensed Dictionary on its title page has as editor, Dorsey Gardner, do you know him? A. I used to know him.

x Q. 29. Has he been connected with the Merriam Company since you have been with them? A. No.

x Q. 30. Is Dorsey Gardner now alive, or if not when did he die? A. He is dead but I don't know when he died. 524

x Q. 31. To the best of your knowledge how long is it since he died? A. I don't know, some time prior to my coming to the company seven years ago I should say.

(Signature waived.)

DEPOSITION CLOSED.

525

Kirk N. Washburn—Direct.

KIRK N. WASHBURN, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testifies as follows:

IT IS HEREBY STIPULATED between the counsel for the respective parties herein that the affidavit of said Kirk N. Washburn made for use upon the motion for preliminary injunction herein and verified on, to wit the third day of January, 1912,
 526 shall be here inserted in the record as the examination in chief of said Kirk N. Washburn, with the same force and effect as if said Washburn had been duly examined at large by way of question and answer, but subject to further examination and cross-examination.

Affidavit of Kirk N. Washburn.

STATE OF MASSACHUSETTS, }
 527 County of Hampden, } ss.:

KIRK N. WASHBURN, being first duly sworn deposes and says:

I reside at Springfield, Massachusetts. I am the Secretary and one of the managers of G. & C. Merriam Company, the complainant herein. I am upwards of fifty-five years of age. I have been one of the Merriam Company's managers for something like fourteen or fifteen years, but
 528 I have been connected with the company in its general business for upwards of twenty-six years. My position is such as to make me familiar with substantially all the details of the Company's business and with everything that is going on in the company. I am specially familiar with the Sales Department and in time past have acted as travelling salesman for the Company. In that capacity I have visited all sections of the United States and most of Canada.

The Merriam Company advertises its dictionar-

ies by means of advertisements in newspapers and periodicals and by means of circulars sent to individuals and by travelling solicitors. It has done this for more than twenty-five years to my knowledge and was doing so at the time I became connected with the company. These advertisements are published substantially in all magazines and newspapers of the United States; specifically they are published in such magazines as the Century, Cosmopolitan, Harpers, Scribners and other like periodicals. For a great many years the Merriam Company has published and circulated annually at least 2,000,000 copies of circulars, leaflets, pamphlets, posters and other similar advertisements of its Webster's dictionaries. Since 1864 the complainant and its predecessors have issued and circulated not less than 86,000,000 of such circular advertisements. In all these advertisements of every class, the complainant's dictionaries have invariably been described as Webster's Dictionary, usually coupled with some other word to identify the specific book or edition, such as Webster's International Dictionary, Webster's Collegiate Dictionary, Webster's High School Dictionary, etc. When our dictionaries as a class are referred to, we designate them simply as Webster's dictionaries and that is the name by which they are known in the trade and among the public. Thus for many years our letter heads have contained the statement that G. & C. Merriam Company are the "Publishers of Webster's Dictionaries." Beginning with the 1864 edition of Webster's Unabridged Dictionary, the complainant and its predecessors has spent for advertising its said Webster's dictionaries, both bridged and unabridged, more than \$1,900,000 and this sum does not include the amount spent by the American Book Company or its predecessors Ivison, Blakeman Taylor & Co., who

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532

have handled some of the abridged dictionaries under contract with us. I do not know the precise amount spent by them, but it is a very large amount. For the last twenty years at least, the G. & C. Merriam Company has spent in advertising its said Webster's dictionaries under that name, not less than \$50,000 annually.

- 534 In preparing new and revised editions of its Webster dictionaries and in keeping the same up to date, the complainant and its predecessors have spent not less than \$1,100,000. This does not include the editions of 1847 and 1859, but is limited to the amount spent for subsequent editions.

- 535 The complainant's travelling salesmen cover substantially the entire United States and much of Canada. Our Australian agency covers Australia and New Zealand, as well as Tasmania. We also have a representative in England. All of these agents canvass and sell our books under the name of Webster's dictionaries, or in the case of particular books, under the name Webster's Dictionary coupled with the word adopted to designate the particular book. This has been the course of business for more than twenty-five years to my knowledge, and probably much longer. The complainant has established agencies and regular customers, including retail dealers and book jobbers, in substantially all the larger cities of the United States, and at various places in Australia, at London, and at Paris. In substantially all these places there are people who always carry our dictionaries in stock, and sell them under the name of Webster's Dictionary. The territorial extent of the Merriam Company's sales of Webster's dictionaries includes the entire civilized world and some portions of it that are not considered civilized. The com-
- 536

plaintant regularly sends and sells its Webster dictionaries in every state of the Union.

Since the year 1864, and omitting all editions of prior dates, the complainant and its predecessors has sold more than 1,200,000 copies of its large or unabridged Webster's Dictionary. Including the smaller or abridged Webster's dictionaries during the same period the complainant has sold more than 12,000,000 copies of its Webster's dictionaries. Not less than 500,000 of the large unabridged Webster's Dictionary have been purchased for use in the schools of this country. We have no means of knowing definitely how many of the abridged dictionaries have gone into the schools, but a very large proportion of them have been sold to school boards for school use, being distributed to individual pupils. There is practically no school in the country which is without a dictionary bearing the imprint of G. & C. Merriam Company or its predecessors and issued since the Unabridged Dictionary of 1864. In some states, including Wisconsin, Minnesota and Kansas, our Webster's dictionaries have been officially adopted for use in the schools. In New York, our Webster dictionaries are officially approved for school use.

The long and continuous publication of Webster's dictionaries by our house, their widespread and enormous sales, the continuous and extensive advertising of them, and the care, skill and scholarship employed in their making and in keeping them revised up to date, have made our Webster's dictionaries almost universally known wherever the English language is spoken. Our dictionaries under the name of Webster's Dictionary, have become a recognized and standard work of reference and are referred to, cited and relied upon by Courts, lawyers, scholars and literary men. As illustrating the manner in which the

511

Kirk N. Washburn—Direct.

name Webster's Dictionary is used as designating our books, I refer to the exhibit filed herewith, marked "Complainant's Exhibit—Webster in the Courts." This exhibit is composed of facsimile letters received by the complainant from the judges of various Supreme Courts in the United States. These letters show over their own signatures, not only the authority and standing which our dictionary has, but also the manner in which the judges generally throughout the country use the name Webster's Dictionary as the designating title and description of our dictionary and no other.

That the name Webster is fully and universally identified with the dictionaries of the Merriam Company and that the use of said name "Webster's" as the designating name or description of other dictionaries not published by the complainant is deceptive and confusing and that the public suppose that such books are the genuine Webster's dictionaries of the complainant, is shown by the fact that without any solicitation upon the part of complainant, or previous communications relating thereto, the complainant has received numerous letters, inquiries and even orders for unauthorized and bogus Webster dictionaries issued by other persons within recent years. These letters show plainly the state of the public mind upon this subject. Some of them are as follows:

544

Letter No. 1.

"YARMOUTH, NOVA SCOTIA.

9th Apl. 1910.

Messrs. G. & C. MERRIAM Co.,
Springfield, Mass.

Gentlemen:

Can you tell me what edition of Webster's Dic-

Kirk N. Washburn—Direct.

545

tionary Messrs. Moyer Co. are advertising in the enclosed circular? Some of the school teachers think it is your "New International," but I have told them that I think it is the old "Unabridged," am I right?

Please send me by mail a few sample pages of the new "International," and oblige,

Yours respectfully,

H. J. VICKERY." 546

The circular enclosed in the above letter, advertised two dictionaries under the respective names of Webster's Empire Dictionary and Webster's College Dictionary, both of which are published by the Saalfeld Publishing Company, against which an injunction has recently been directed by the Circuit Court of Appeals in the Sixth Circuit and neither of which books is a genuine Webster's Dictionary, published by the complainant or its predecessors. 547

Letter No. 2.

"ISTHMIAN CANAL COMMISSION.

Culebra Canal Zone

March 25, 1911.

Dear Sirs:

Kindly quote me price for copy of your Inter-collegiate Dictionary, thin paper De Luxe edition, latest revised in Morocco binding. 548

Had correspondence with you about a year ago regarding the purchasing of your new Webster's International Dictionary, but have decided that a smaller edition will serve my purpose.

Your kind attention will be appreciated.

Respectfully,

ROGER S. ERDMAN."

549

Kirk N. Washburn—Direct.

The dictionary referred to in the above letter as our "Intercollegiate Dictionary" is a dictionary published by the above-named Saalfield Publishing Company, under the name of Webster's Inter-Collegiate. It is involved in a suit pending in this Court and was involved in the suit against Saalfield still pending in the Sixth Circuit and in which an injunction has been directed.

550

Letter No. 3.

"Kindly let me know the price of Webster's Inter-Collegiate dictionary and where I can obtain it. I have been trying some of the Department stores here but they don't seem to have that one. Have you any one in still better print? I desire a dictionary bound in Morrocco, printed on Bible paper. Please let me hear from you.

Respec.

551

ANDREA J. NIELSEN,
21 S. Broad St.,
Philadelphia."

The book referred to in above letter is the bogus Webster published by Saalfield.

Letter No. 4.

"Dear Sirs:

552

Do you publish Webster's Intercollegiate Dictionary, thin paper edition in Full Flexible Morrocco with thumb index, if so what is the price.

Yours resp.

FERDO A. MORRILL.

Old Orchard, Maine."

This letter was received by complainant on June 6th, 1911, and enclosed with it was a signed inquiry coupon clipped from one of our own ad-

Kirk N. Washburn—Direct.

553

vertisements of our Webster's New International Dictionary.

Letter No. 5.

"GEORGIANNA, FLA., Feby. 2, 1911.

G. & C. MERRIAM Co.,
Springfield, Mass.,

554

Gentlemen:

Will *Webster's Inter-Collegiate* Dictionary cover my wants in camp here, for the use of young people reading Shakespeare, Browning, Poe, George Eliot, Motley, R. L. Stevenson, Macauley and other English literature of the best class? If you know that it contains all words of these writers I will take my chances on others not named above, but it *must* cover these. Please advise and oblige.

Yours truly,

555.

F. W. HANDY."

Letter No. 6.

"CARTHAGE, Mo., July 31, 1911.

Gentlemen:

Your representative that is passing through Carthage, Joplin, Sacoxie and other points around here—Said he lived in Los Angeles, Cal., had been selling dictionaries Seven (7) years. Sold me one of your dictionaries the other day July first. He showed me his prospectus and called my attention to the No. of *new words* 35 I think he said and that my dictionary was a reprint could not rely on it. I gave him \$10. and my dictionary. I find the dictionary he left me is not as he represented it. I do not find the words, such as chauffeur and other words. My dictionary he took up was Websters' New Cosmopolitan, bound with sheep skin and the back was

556.

557

Kirk N. Washburn—Direct.

breaking. There is no D in the thumb index but two C's. of this dictionary he left me. Hoping you will help me to get the kind of dictionary he made me believe he was selling me. I know you can make him do what is right. I do not believe you want men out for you that misrepresents your books. Hoping to hear from you soon, I remain

558

MRS. JOHN V. KOONTZ,
703 East Chestnut Ave.,
Carthage, Mo.

P. S.—I don't know who or how to address this but I trust it will in time reach the proper place and get attention.

MRS. J. V. K.

559

"The dictionary your man sold me is Webster Universal Dictionary but none of the new words in it as he said there was."

The books referred to in the above letter as Webster's Cosmopolitan Dictionary and Webster's Universal Dictionary are the same dictionary published under different names by the Saalfeld Publishing Company to which reference has been made. Neither of them is a genuine Websters' dictionary and neither has ever been published by the complainant or its predecessors.

560

Letter No. 7.

"Gentlemen:

Will you please send me an advertisement of your Inter-Collegiate Dictionary.

Respectfully,

JOSEPH LAURIER,
Bronxwood Avenue, and
East 214th Street,
Williamsbridge, New York, N. Y."

Kirk N. Washburn—Direct.

561

Letter No. 8.

“BOSTON, MASS., NOV. 18, 1911.

MERRIAM Co.,

Please ship on our account
1 Webster Inter-Collegiate Dictionary cloth.

J. L. HAMMET Co.,
250 Devenshire Street,
Boston, by F. W. B.” 562

Letter No. 9.

“NORRISTOWN, PA., NOV. 28, 1911.

C. & G. MERRIAM Co.,
Springfield, Mass.

Gentlemen:

Some days ago you quoted me \$4. Sheep Inter-Collegiate Dictionary with 30% discount. I 563.
think that was the quotation. I have mislaid the letter and I am not sure. I enclose my check for \$11.20 for which please send me as quick as possible by express so that I may get them by Friday if possible four Intercollegiate dies/ in sheep.

If this is not enough I will send you the difference, or if it is too much let me have the difference. At any rate send me the books for I want them for a School Board that will close their terms first of the month and I went to get my 564
money from them before the new board comes in.

Yours resp.

THOMAS SAMES.

Please rush them.”

This letter was in reply to a previous letter of ours in which we had quoted him prices upon our Webster's Collegiate Dictionary.

565

Kirk N. Washburn—Direct.

Letter No. 10.

"NEWTON LOWER FALLS, MASS.

November 16, 1911.

MERRIAM & COMPANY,
Springfield, Mass.

DEAR SIR:

566

Kindly advise how much you ask for copy of the latest edition of Webster's Universal Dictionary. Also please advise if you get out a India Paper Edition.

Yours very truly,
AMERICAN MICA COMPANY,
F. W. Webster, Treas."

Letter No. 11.

567

"THE MORNING EXAMINER."

"CHARLES EWING HAYWOOD,
Editor and Manager.

BARTLESVILLE, OKLAHOMA, 11/15/11

MESSRS. G. & C. MERRIAM,
Springfield, Mass.

GENTLEMEN:

568

Please quote your very best cash prices in quantities on dictionaries such as being used by Kansas City Journal net cash f o b your nearest distributing point to Bartlesville and oblige,

Yours very truly,
(signed) PAUL CARTER,
City Circulating Examiner."

The dictionary referred to in the above letter

Kirk N. Washburn—Direct.

569

as being used by Kansas City Journal is the so-called Webster's New Standard Dictionary, published by the Syndicate Publishing Company and not by the complainant herein.

Letter No. 12.

"JERSEY CITY, N. J., Nov. 10, 1911

MERRIAM Co.,

570

Springfield, Mass.

GENTLEMEN:

Kindly send two (2) copies Websters Intercollegiate Dictionary, leather, with bill.

Very truly yours,

J. W. HARRISON."

Letter No. 13.

"JERSEY CITY, N. J., Nov. 15, 1911.

571

G. & C. MERRIAM Co.,

Springfield, Mass.

GENTLEMEN:

Relative to our order of Nov. 10th, send one copy Collegiate Dictionary," thin paper edition art cloth binding, list \$3.50.

In regard to your request as to how we got name of "Intercollegiate" would state customer specified this edition and finding same listed in American News Co. Book Catalogue, applied to them, and received reply that they were out of stock. 572

We then wrote you direct and upon receiving your letter of Nov. 11th, took up matter with customer, explaining the deception with the result that they have decided to order one copy for examination.

573

Kirk N. Washburn—Direct.

Kindly forward one copy without delay, and we will remit upon receipt of same.

Very truly yours,

J. W. HARRISON"

Letter No. 14.

"CHICAGO, ILL. 378 Wabash Ave.

574

% Allyn & Bacon.

G. & C. MERRIAM & Co.

Springfield, Mass.

DEAR SIRs:

Please quote price on Webster's Intercollegiate Dictionary, limp cover, thin paper edition.

Very truly yours,

P. H. VERNOR."

575

Letter No. 15.

"Nov. 30, 1911.

G. & C. MERRIAM & Co.

Springfield, Mass.

I wish to buy an Imperial Webster for class room. Please let me know what price you make to schools and teachers. The book is offered me at a low price by the Book Supply Co. but I am
576 afraid of getting inferior print and paper. Please address

MISS J. F. CLARKE,
Greensboro Fem. College,
Greensboro, N. C."

The book referred to as Imperial Webster, is evidently a Webster's Imperial Dictionary, published by Saalfeld and not one of our publications.

Kirk N. Washburn—Direct.

577

Letter No. 16.

“ELON COLLEGE N. C. 10/12/1

MESSRS. G. & C. MERRIAM,
Springfield, Mass.

DEAR SIRs:

I see some of our papers carrying enclosed adv. As you are the publishers I presume your are backing the advs. and supplying the books. If so, on what terms? I should like to carry a similar offer if conditions are favorable. 578

Thanking you,

Respec.

J. O. ATKINSON, Editor,
THE CHRISTIAN SUN.”

The advertisement referred to was a dictionary coupon advertising Webster's New Standard Dictionary, published by the Syndicate Publishing Co. It was in all respects like the dictionary coupons contained in Complainant's Exhibit “Defendant's Advertisements” filled in this Court in the suit against the Syndicate Publishing Co. 579.

Letter No. 17.

“FORT SMITH, ARK. Sept. 29/1910

G. & C. MERRIAM & Co.

Springfield, Mass.

580

GENTLEMEN:

In my work of selling I have had so many calls for Webster's Universal Dictionary and I understand this is put out by you. I would like to have your prices on the different bindings, if there is more than one, also a prospectus or some

581

Kirk N. Washburn—Direct.

literature that will enable me to give the prospective buyer some idea of what they are getting. I have had two calls this week for your dictionary in the best binding, by that I mean leather, so I wish you would let me know at once whether I can place these orders, your terms upon same and what commission you pay.

I have had several years experience in this line
582 of work and am doing splendidly in this City. Two parties are awaiting my answer to them concerning the dictionary, so please advise me at once concerning same.

Yours very respt.,

Mrs. M. C. WRAY.

Fort Smith, Ark. Gen. Del.

P. S. Please send first mail contracts covering, especially the best binding; one party in particular,
583 wants the dictionary just as soon as she can get it.

W."

In the Fall of 1911 our Company had some correspondence with Mr. Emmett Sipe, Connellsville, Pa., R. F. D. 26, with respect to the purchase by him of our Webster's New International Dictionary. On or about November 14th we received from Mr. Sipe, the following letter:

581 Letter No. 18.

"CONNELLSVILLE, PA. Nov. 14, 1911.

G. & C. MERRIAM Co.,
Springfield, Mass.

DEAR SIRs:

Your kind letter you have sent me trying to show me your books. I am sorry to tell you but I have bought a cheaper one from the Connells-

Kirk N. Washburn—Direct.

585

ville Courier, a paper. It is pretty one and one of yours of course. Thank you very kindly,

EMMETT SIPE."

We thereupon wrote Mr. Sipe asking him to tell us the name of the book he had bought from the Connellsville Courier and received in reply, the following letter:

Letter No. 19.

586

"CONNELLSVILLE, PA. Nov. 17, 1911.

G. & C. MERRIAM Co.,

Springfield, Mass.

DEAR SIRs:

Yours 15th. I will say the book that I got is Webster's New Standard Dictionary. It is limp leather—red edges \$4.00 for 98 cents. I told you in my other letter that it was one of yours. 587

EMMETT SIPE."

Subsequently we received a post card from Mr. Sipe reading as follows:

Letter No. 20.

"CONNELLSVILLE, PA., Nov. 18, 1911.

G. & C. MERRIAM Co.,

Springfield Mass.

588

DEAR SIRs:

I wrote you letter and lost it before I got it mailed. May be some one will find it and drop it in a letter box. If not this card will answer. The name the book I got was Webster's New International Dictionary Limp leather red edges, \$4. sold here for 98 cents.

Yours very truly,

EMMETT SIPE."

589

Kirk N. Washburn—Direct.

Letter No. 21.

"COLLIER'S"

THE NATIONAL WEEKLY.

416 West 13th St. New York.

December 4, 1911.

590

G. & C. MERRIAM COMPANY,
Springfield, Mass.

DEAR SIR:

Recently I saw an advertisement by some Chicago concern of an India paper Webster's Unabridged Dictionary. I have always understood that you were the sole publishers of Webster's. Is this Chicago edition authentic?

Very truly yours,

591

CASPAR WHITNEY."

Letter No. 22.

"NASSAU COUNTY REVIEW.

FREEPORT, N. Y., JUNE 16 1909.

G. & C. MERRIAM CO.,
Springfield, Mass.

GENTLEMEN:

592

Will you kindly advise us how these people can sell a Webster Dictionary. We thought you were the only ones having that privilege.

Very truly

NASSAU Co. REVIEW.

W. C."

Enclosed in the above letter was a circular from the Saalfeld Publishing Company. The dictionary referred to therein is one of the Saal-

Kirk N. Washburn—Direct.

100

field Company's so-called Webster's dictionary and is involved in litigation.

Letter No. 23.

"Purchase Order

V. A. Owen Penmanship Company,
Normal Instructor Primary Plans,
Ithaca, N. Y., 4.30, 1909

100

No. 1764

M. G. & C. Manahan

Springfield, Mass.

Ship as immediately via c/o E. L. & W. Felt.
above Number must appear on invoice. Render
separate invoice for each order.

1—Imperial Dict. Shoop Indented.

Please cash

100

V. A. Owen Penmanship Co.,

Approved:

V. A. Owen, Pres. per F"

That the dictionary referred to by the words
"Imperial Dict." is the dictionary published by
the Southfield Company under the name Webster's
Imperial Dictionary and is the same book also
published under the name "Webster's Universal
Dictionary."

100

597

Kirk N. Washburn—Direct.

Letter No. 24.

“Order

JOS. H. TISDALL

Wholesale & Retail Stationer—Blank Book Mfg.

School Supplies, Apparatus & Typewriters.

912 Arch Street

598

Printing—Engraving—Lithographing

PHILADELPHIA, PA.

G. & C. MERRIAM Co.,

Springfield, Mass.

Deliver with bill marked H6039. Via Freight.
To our Receiving Dept. 911 Cuthbert St.

I Doz. Dictionary Webster Intercollegiate indexed.

599

JOS. H. TISDALL,
per N. Baker.

Deliver no goods without signed order.”

Letter No. 25.

“CHARLESTON, VA. NOV. 25, 1908.

THE G. & C. MERRIAM Co.,

Springfield, Mass.

600 GENTLEMEN :

Please mail direct to Mr. Charles Ward, The
Gables. Halifax, England, 1 Webster's Intercol-
legiate Dictionary—Thin paper—cloth.

Yours truly,

S. SPENCER MOORE & Co.,

Kirk N. Washburn—Direct.

601

Letter No. 26.

"EASTHAMPTON, MASS. March 9, 1909.

G. & C. MERRIAM Co.,
Springfield, Mass.

DEAR SIRs:

Will you kindly send me the "Story of a Book" and also prices of your International and Inter Collegiate Dictionaries. 602

Yours truly,

EMILIEN E. GELINEAN,
Easthampton, Mass.

(Williston Seminary)

Letter No. 27.

"BIG SPRINGS, TEX., Aug. 28, 1908.

G. & C. MERRIAM Co.,
Springfield, Mass.

603

DEAR SIRs:

Please send me the price of your "Websters International Dictionary"—also your "Intercollegiate Dictionary" & your "Dictionary Habit."

Yours truly,

(MISS) ANNA MAE SCOTT,
Big Springs, Tex." 604

Letter No. 28.

HAVANA, May 28, 1908.

G. & C. MERRIAM Co.,
Springfield, Mass.

GENTLEMEN:

Please advise me the price of your Websters

605

Kirk N. Washburn—Direct.

Intercollegiate Dictionary so that I may send remittance for same.

Yours very truly,

FRED ACKERT."

Letter No. 29.

"DEAR SIRs"

606

Enclosed please find three dollars (\$3.00) for which please send me 1 volume of the Webster's Intercollegiate Dictionary. Hoping to receive same in a few days in good condition, I remain

WALDMAR A. L. JACOBSON,
22 Hardy Avenue,
Campello, Mass.

Letter No. 30.

607

"NUSBAUM BOOK & ART Co.,
100-102 Granby St.,
Cor. Brooks ave.,
Norfolk, Virginia.

March 3. 1909.

G. C. MERRIAM Co.,
Springfield, Mass.

GENTLEMEN:

608

Please let us have your catalogue on Webster's Inter Collegiate Dictionary, same being illustrated, thumb index, and bound in dark flexible leather.

Very truly yours,

T-LTG

NUSBAUM BOOK & ART Co.,

Kirk N. Washburn—Direct.

609

Letter No. 31.

"E. R. SHEPARD,
Macksville, Kans.

Jan. 15, 1908.

G. & C. MERRIAM Co.,
Springfield, Mass.

610

GENTLEMEN:

Please mail me circular information concerning Webster's Collegiate, Webster's Condensed, Webster's Intercollegiate Dictionaries and state the date of the latest edition of each. I want a new dictionary and will buy through my dealer, but he is not able to make sure that he can procure a late edition of any of these.

Yours truly,

E. R. SHEPHERD." 611

Letter No. 32.

"G. & C. MERRIAM & Co.,
Springfield, Mass.

Send "Dictionary Wrinkles" and description and price list of "Thin paper Intercollegiate" Dictionaries at once to

Box 283. HUGH ELMA BROWN,
East Hampton, Conn." 612

613

Kirk N. Washburn—Direct.

Letter No. 33.

"C. F. McCONNON & Co.
Publishers and Dealers in
School Books and Supplies, Maps, Globes, Charts,
etc.

WILKESBARRE, PA., Sept. 13, 1909.

614

MESSRS. G. & C. MERRIAM CO.,
Springfield, Mass.

GENTLEMEN:

Kindly send us your best terms to agents for
your Inter Collegiate, etc., Dictionaries and oblige.
If terms are satisfactory we may be able to send
you some business, you to do billing and collect-
ing direct from Boards of Education.

615

Sincerely yours,
C. F. McCONNON."

Letter No. 34.

"LAKE EDWARD, CANADA, Aug. 15-07

DEAR SIRs:

Enclosed please find money order for \$5. in
payment of an Intercollegiate Dictionary which
please send me care of above address.

616

Yours very truly,
R. S. GUNN."

Letter No. 35.

"YOUNGSTOWN, OHIO, Dec. 20th, 1908

Please send me specimen pages, price and terms
and Dictionary Wrinkles—as per ad in Dec. Out-
look. Of the "International."

Kirk N. Washburn—Direct.

617

I notice there is an Imperial Webster's; published in Akron, O. claiming to be latest up to date, etc., which is which.

R. E. WOLCOTT,
225 Lincoln Ave.

Letter No. 36.

Office of Superintendent of Schools,

F. E. WHITEMORE, Supt.

618

SOUTH HADLEY FALLS, MASS. Oct. 18, 1906

AMERICAN BOOK Co.,

Boston, Mass.

GENTLEMEN :

Please send me the following and charge the same to S. Hadley, 8 Webster's New Standard Dict. Student's common school Ed.

619

Yours, etc.

F. E. WHITEMORE."

Letter No. 37.

"November 5th, 1908.

MESSRS. G. & C. MERRIAM Co.,

Please send me specimen pages and price of your new dictionary as advertised in the above cut from Everybody's Magazine for October.

620

DAVID A. MORRISON,
Detachment 7th Infty.
400 Brown Ave.,
Canton, Ohio."

The cut referred to in said letter was an advertisement of Webster's International Dictionary published by complainant in said magazine. In reply to said letter complainant sent the speci-

621

Kirk N. Washburn—Direct.

men pages and quotation of said dictionary, and thereafter and on or about December 2nd, 1908, complainant received a letter from said Morrison reading in full as follows:

Letter No. 38.

"CANTON, OHIO, Dec. 18, '08.

622 G. & C. MERRIAM Co.,

Dear Sirs:

In reply to your favor of to-day, wish to inform you that I have purchased a dictionary from a dealer here in town who handles your work.

Yours truly,

DAVID A. MORRISON,
400 Brown Ave.,
Canton, Ohio.

623

In reply to said last letter complainant on December 22nd, 1908 wrote to said Morrison as follows:

Letter No. 39.

"Dec. 22, 1908.

MR. DAVID A. MORRISON,
400 Brown Ave.,
Canton Ohio.

624

Dear Sir:

We have your letter of Dec. 18th and are glad to learn that you have purchased a copy of the dictionary from your local dealer. It is, of course, quite as satisfactory for us to have the order go to your local dealer as to come directly to us here at Springfield.

We enclose herewith a stamped return envelope and for the sake of our records we shall be

Kirk N. Washburn—Direct.

625

glad to know if the dictionary you have is Webster's International Dictionary. If it is not, will you kindly give us the exact title. We wish to thank you for the courtesy in advising us that you have secured the dictionary and hoping you will give us the above information, we are,

Yours very truly,

G. & C. MERRIAM COMPANY, 626
By''

WCS-M

In reply to the said last letter complainant received on or about January 9th, 1909, a letter from Mr. Morrison reading in full as follows:

Letter No. 40.

"CANTON, OHIO, January 8, 1909.

G. & C. MERRIAM Co.,

627.

Dear Sirs:

In ans. to your letter of some days ago I will say that the title of the dictionary I bought is the "Webster's Universal Dictionary." Please send me two copies of your Webster's Little Gem Dictionary as per your advertisement here inclosed to the following address and oblige,

DAVID A. MORRISON,
Company A, 7inf.
400 Brown Ave. 628.
Canton, Ohio."

Letter No. 41.

"BOSTON, MASS., Dec. 26, 1911.

THE G. & C. MERRIAM COMPANY,
Springfield, Massachusetts.

Gentlemen:

We desire to procure a dictionary printed on

-629

Kirk N. Washburn—Direct.

India paper and would like to know if you publish, or expect to publish the Standard or Inter-collegiate Dictionaries in this manner.

Any information you can give us relative to this matter will be appreciated.

With best wishes, we are,

Sincerely yours,

-630

THE CHRISTIAN SCIENCE PUBLISHING SOCIETY.

By David B. Ogden,
Manager."

LPC/B8

-631

During the year 1911 The Syndicate Publishing Company entered upon a plan or scheme for the sale and distribution of its said so-called Webster's New Standard Dictionary through the newspapers of this country. The plan was for such newspapers to sell said dictionaries in exchange for coupons and a small sum in cash. called "expense bonus." In pursuance of this plan said Webster's New Standard Dictionary has been widely and loudly advertised in the newspapers of a great many of the larger cities of this country, and among others in the following cities, to wit: New York City, N. Y.; Brooklyn, N. Y.; Buffalo, N. Y.; Springfield, Mass.; Cleveland, Ohio; Philadelphia, Pennsylvania; Dallas, Texas, Milwaukee, Wisconsin; St. Paul, Minnesota; Cedar Rapids, Iowa; Denver, Colorado; New Bedford, Massachusetts; Peoria, Illinois; St. Louis, Missouri; Waterbury, Connecticut; Houston, Texas; Topeka, Kansas; Kansas City Missouri; Omaha, Nebraska; Paducah, Kentucky; St. Joseph, Missouri; Wichita, Kansas; Los Angeles, California; Charlotte, North Carolina; Washington, D. C.; Nashville, Tennessee; and Baltimore, Maryland. Some of the advertisements which appeared in the newspapers of these cities I produce herewith to be filed as

-632

an exhibit marked "Complainant's Exhibit, Defendant's Advertisements." Said advertisements have resulted in the sale of an enormous number of said Webster's New Standard Dictionary, one paper alone, namely, the New York American, claiming to have thus disposed of over 100,000 of them. They have been widely bought by the public under the belief that they were buying the genuine Webster's Dictionary published by the Merriam Company. These books have been sold upon the reputation of the Merriam Company's Webster dictionaries. This unfair competition has resulted in very great damage to the complainant herein, some of our General Agents reporting that in cities where the local newspapers have exploited this book, the sales of the genuine Webster dictionaries published by our house, have fallen off to the extent of 50% or more. 634

That it is the name "Webster's Dictionary" which has caused the enormous sales of its so-called Webster's New Standard Dictionary, appears very clearly from the following fact: 635

As elsewhere appears, this book was formerly published by the Christian Herald, under the name or title of the Crown Dictionary. The sales of this dictionary under that name were so inconsiderable that it is almost impossible to find copies in the market; although the complainant has made diligent effort to do so, it has succeeded in locating only two copies of said Crown Dictionary, one of which is filed as an exhibit in this suit. Nevertheless, after defendant had changed its name from the Crown Dictionary to Webster's New Standard Dictionary, and although no other substantial changes are made therein, said book has been sold in the enormous quantities above indicated. Another circumstance indicating that it is the great reputation of 636

our Webster's dictionaries which the defendant wishes to appropriate by using the name of our dictionaries as the name of its dictionaries, is found in the fact that although the copyright has long since expired upon the Worcester's Dictionary, none of these enterprising competitors see fit to use the name Worcester in connection with their new dictionaries. They
638 will be content with nothing except the name "Webster's." The obvious reason is that Worcester's Unabridged Dictionary has not been kept up to date, and for many years has been practically a dead book.

As explained in other affidavits to be filed herewith, the books respectively entitled "Webster's New Standard Dictionary" (subsequently called Webster's New Illustrated Dictionary) and
639 "Webster's New Century Dictionary," published respectively by the Syndicate Publishing Company and the Cupples & Leon Company, are substantially the same book and both are substantially and almost exactly identical with a book previously published under the name or title of the "Crown Dictionary." All these books are filed as exhibits herewith and the most superficial comparison of them shows that without doubt they are printed or produced from the same plates, with merely minor and inconsiderable
640 plate corrections, calculated to give the work an up-to-date appearance.

The said Crown Dictionary was published and copyrighted in the year 1904 by one Louis Klopsch, proprietor of the Christian Herald, as fully appears by a certified copy of the record of entry for copyright and certificate, showing receipt of copies, under the seal of the Copyright Office, hereto annexed and marked "Complainant's Exhibit, Copyright Certificates relating to Crown Dictionary." I am informed and believe

that two sets of plates of said dictionary were disposed of by said Louis Klopsch, one to the Syndicate Publishing Company or someone from whom they obtained the same; one set of plates to Cupples & Leon Company, from which said plates said dictionaries, Webster's New Standard Dictionary and Webster's New Century Dictionary were respectively produced. It was not until within the last few months that the complainant learned of the substantial identity of said Crown Dictionary with said Webster's New Standard Dictionary and said Webster's New Century Dictionary. 642

The Complainant is largely engaged in interstate and foreign commerce in its said Webster's dictionaries. Its said dictionaries are manufactured and printed at the Riverside Press, at Cambridge, Massachusetts, and are shipped by complainant from the State of Massachusetts to customers in substantially all the states of the United States on orders received therefor from customers located or residing in various states of the Union. Some of our dictionaries are manufactured at the City of Chicago, in the State of Illinois, and some at the City of Albany, in the State of New York, and are shipped from said states to other states of the United States to customers residing or located in said other states. Our dictionaries are also shipped from Massachusetts to foreign countries and go practically all over the world. Upon all our dictionaries thus shipped in Interstate and foreign commerce, our respective trade-marks, as set out in the bill of complaint herein, are stamped or affixed and go with the books into the market. These trade-marks have been so used by complainant continuously ever since the time of their adoption, as alleged in the bill of complaint. We also reproduce and use said trade-marks in our advertisement of 643 644

our said dictionaries and upon our letter heads and envelopes and in substantially all our literature referring to our said dictionaries, and have done so for many years.

I produce to be filed as exhibits herewith, specimen copies of some of complainant's dictionaries, to wit: Webster's Collegiate Dictionary, Webster's Academic Dictionary, Webster's High School Dictionary, Webster's Common School Dictionary and Webster's Primary Dictionary, showing complainant's trade mark as used upon its said dictionaries.

Said trade mark is used in a similar manner upon the other dictionaries published by complainant, as alleged in the bill, but which it is deemed unnecessary to file in this case. The defendant's said dictionaries, as alleged in the bill, have also been widely sold throughout the United States as interstate commerce, stamped and marked with the said imitation and infringement of the complainant's said registered trade marks as alleged in the Bill of Complaints herein.

KIRK N. WASHBURN.

Subscribed and sworn to before me/
this 2nd day of January, 1912. }

[SEAL.] CLARENCE S. CHAPIN,
Notary Public,
Springfield, Mass.

"COMPLAINANT'S DEMAND, COPYRIGHT CERTIFICATE
RELATING TO CROWN'S DICTIONARIES."

CLASS A XXc. No. 100756.

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED,

That on the 2nd day of November, 1908, Louis Klopch, of New York, N. Y., hath deposited in

Book V. Additions—Dices.

256

the title of a book, the title to which is in the following words, to wit:

The *Crown Dictionary of the English Language*. Based upon the unaltered dictionary of Noah Webster, L.L.D., and revised and brought up to date in accordance with the most current English and American authorities. By Edward T. How, L.L.D.

The *Christian Month*, New York, the right whereof he claims as proprietor in conformity with the laws of the United States respecting Copyrights.

Office of the Register of Copyrights

Washington, D. C.

James P. Jones

Librarian of Congress.

By

Thorvald Solberg

Register of Copyrights.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereunto affixed this eleventh day of December, 1911.

Edward M. Jones,

Assistant Register of Copyrights.

Copyright Office of the United States of America.

Washington, D. C.

[Seal]

257

Coramius Opera et omnia Latina Scripta et Latina.

Library of Congress, Washington.

I hereby certify that two copies of the book entitled *The Crown Dictionary of the English Language*, Based upon the unaltered dictionary

653

Kirk N. Washburn—Cross.

of Noah Webster and revised and brought up to date (etc) by Edward T. Roe, registered for copyright on Nov. 3, 1904, No. 100756, Class A,XXc, were received as copyright deposits on Nov. 11, 1904.

In Witness Whereof, the seal of this Office has been hereunto affixed this sixteenth day of December, 1911.

654

ERNEST BRUNCKEN,

SEAL.

Assistant Register of Copyrights.

655

MR. BEAN: Counsel for defendants objects to said affidavit as irrelevant, immaterial and not relating to any issue in this cause and especially to so much and such parts thereof as relate to various dictionaries other than Webster's New Standard Dictionary or Webster's New Illustrated Dictionary or Webster's New Century Dictionary, published by others than either the defendant Syndicate Publishing Company or the defendant Cupples & Leon Company, or any party acting either for or under a license or any form of business agreement with either of them.

MR. HALE: Complainant tenders the witness to defendants for cross-examination.

CROSS-EXAMINATION by Mr. Bean:

656

x Q. 1. You have been connected with the Merriam Company for twenty-five years or more?

A. I have.

x Q. 2. In various capacities? A. Yes, sir.

x Q. 3. I suppose you began at the foot of the ladder and have climbed up? A. Not quite at the foot, but close to it.

x Q. 4. And during that period you have been quite familiar with the dictionary business of the Merriam Company as well as the English dic-

tionary business in general? A. So far as it would come naturally within my purview I have.

x Q. 5. How wide has been your purview? A. I have naturally known the general dictionary business, both ours and the work of other dictionary publishers, so much as would be public.

x Q. 6. You have been with this company since the early 80s? A. Yes, sir.

x Q. 7. Were you with the company when Webster's Condensed Dictionary was published in 1884. A. It was published just after I came here. 658

x Q. 8. Has that dictionary been published and sold either by you directly or by some other house under business arrangements with you ever since? A. It has.

x Q. 9. Is it now distributed by the Reilly & Britton Company? A. It is.

x Q. 10. I show you a copy of Webster's Condensed Dictionary bearing copyright notices as follows: 1884, G. & C. Merriam & Company; 1906 and 1909, G. & C. Merriam Company; and having on its title page the imprint Reilly & Britton Company, G. & C. Merriam Company, and ask you whether that is substantially the same dictionary published by your company in 1884, if you know? A. Supplemental matter has been added at the back and in this latest book a very considerable number of corrections and additions have been made in the text. 659 660

x Q. 11. Those corrections and additions in the text are made, are they not, by cutting out matter in the plates and substituting other matter therefor? A. Yes.

x Q. 12. The general appearance of the pages in the body of the book, by which I mean the style of type and the illustrations, is the same practically, is it not, as in the first edition? A. Yes.

x Q. 13. Do you know whether or not that dic-

661

Kirk N. Washburn—Cross.

tionary is distributed by Reilly & Britton Company with an inscription on the cover including the words "Twentieth Century Edition"? A. I think there is one edition with that, yes.

x Q. 14. Do you know whether or not that is substantially the same as the book to which I have called your attention? A. That book is a book that had additions that were made at the time the copyright was taken out in 1909, as I recall it.

x Q. 15. Was the addition to which you refer in 1909 made in a supplementary page or pages in one place in the book, if you recall it? A. Changes were made throughout the book where it was found necessary; additions and much supplemental matter was added at the back.

x Q. 16. That supplemental matter was not tables of words, not additional words and definitions and other things? A. In addition to that, at the same time additions were made such additions in the text were made as we then deemed necessary.

x Q. 17. But the book was printed from the old plates or renewals of the old plates thus corrected? A. Yes.

x Q. 18. Did you know Dorsey Gardner? A. I did.

x Q. 19. He was the editor, was he not, of Webster's Condensed Dictionary when published in 1884? A. Yes.

x Q. 20. Is he now living? A. He is not.

x Q. 21. Do you know when he died? A. I do not.

x Q. 22. About how long ago do you think it was? A. Ten or twelve years ago.

x Q. 23. You have had no editor distinctively for that book since that time, no new editor? A. The book of course has not been reset, but we

have competent editorial force here at work all the time.

x Q. 24. You now sell, do you not, that dictionary like the one to which I have referred? A. I think so.

x Q. 25. In large quantities, don't you? A. Yes, some considerable quantities.

x Q. 26. The book is sold advertised as premiums and advertised in connection with newspapers, is it not? A. Sold that way and other ways as well. 666

x Q. 27. Do you consider the book as up to date in this form at the present time?

MR. HALE: Objected to as calling for a mere conclusion of the witness and as irrelevant and immaterial.

A. As we fixed it up in 1909 it is pretty well up to date.

x Q. 28. You look at the picture of a locomotive in that dictionary and tell me if in your opinion that is a picture of an up-to-date locomotive? A. For the purpose for which that cut was designed it is eminently well fitted in my opinion, to explain the various parts of the locomotive. 667

x Q. 29. What do you call that part of a locomotive from which the smoke escapes and the cinders? A. When I see it on a locomotive I usually call it a smoke stack.

x Q. 30. If you didn't see it on a locomotive wouldn't you call it a smoke stack? A. You might call a large chimney to a mill a smoke stack, but it would be a chimney nevertheless. 668

x Q. 31. What do you find that is called in that dictionary? A. Chimney.

x Q. 32. Will you look at the picture of a printing press there and tell me if you think that is an up-to-date copy of a printing press? A. I am not an expert in printing presses.

x Q. 33. Do you think any such presses as that are used by your company now in printing dictionaries? A. I don't think so. They use larger presses.

x Q. 34. Would you consider a dictionary which did not contain or define the words "biplane," "hobble skirt," "hanger," or "volt," an up-to-date dictionary.

670

MR. HALE: Objected to as irrelevant and immaterial and further because it does not appear that other editions of this particular book and other editions of Webster's Dictionary do not contain the words mentioned.

671

A. It might very well be. The limits of an abridged dictionary are such that there might well be more important words that ought to be in a dictionary than those are.

x Q. 35. Are you aware whether or not this dictionary is advertised by your company and sold currently as an up-to-date abridged dictionary of the English language?

672

MR. HALE: Objected to as irrelevant and immaterial and as incompetent because not calling for the best evidence which would be the advertisements and representations themselves, and because calling for a conclusion of the witness.

A. We don't advertise it at all.

x Q. 36. Do you know whether it is advertised by others selling and distributing it under authority from you? A. I don't know.

x Q. 37. Haven't you seen that dictionary advertised within the last year, advertised in the newspapers of the country? A. I have, but without seeing the advertisements I couldn't answer that question.

x Q. 38. Is there any other dictionary bearing the title "Webster's Condensed Dictionary" advertised in this country, so far as you know, except that one? A. Certainly not. It is a copyrighted book.

x Q. 39. In your affidavit in this case you say that the Merriam Company's dictionaries "under the name of Webster's Dictionary have become a recognized and standard work of reference and are referred to, cited and relied upon by the courts, lawyers, scholars and literary men." In saying that did you include this Webster's Condensed Dictionary? A. I think Webster's Condensed Dictionary is not often cited. The big, unabridged dictionary is the one that is cited. 674

x Q. 40. And that unabridged or the dictionary which you now publish entitled "Webster's New International Dictionary" is the dictionary, is it not, to which reference is made in the exhibit attached to your affidavit in this case which is marked "Complainant's Exhibit—Webster in the Courts," which is referred to in that pamphlet? A. It is Webster's New International Dictionary, or the predecessors of the New International. 675

x Q. 41. So far as you know Webster's Condensed Dictionary has not been thus referred to by the courts of the country? A. They naturally take the big dictionary.

x Q. 42. So far as you know has it? A. I have no information on that subject. 676

x Q. 43. Do you know whether this dictionary has been advertised as the dictionary indorsed by and cited by the different courts of the country? A. I don't know that.

x Q. 44. You have been aware, have you not, that since about the year 1890 there have been various dictionaries bearing the name of "Webster" in their titles published and sold by various

publishers other than the Merriam Company? A. Yes, but under protest from us.

x Q. 45. You know there have been a good many such dictionaries, don't you? A. I know there have been several.

x Q. 46. Would you say there had not been at least twenty-five such dictionaries? A. I should think the number was smaller than twenty-five.

678 x Q. 47. Have you been familiar with the litigation in which your company has engaged with reference to some of these dictionaries? A. I have been somewhat familiar with that litigation.

x Q. 48. You are acquainted with the fact, are you not, that in the litigation between the Merriam Company and George W. Ogilvie an injunction was issued from the Circuit Court of the United States for the First Circuit, enjoining your company from in any manner claiming the exclusive right to the name "Webster" in the titles to dictionaries?
679

MR. HALE: Objected to, first, as incompetent, irrelevant and immaterial; second, as not the best evidence because the record of the court or a certified copy thereof is the only competent evidence of what was ordered and adjudged in the suit referred to; third, because counsel had not correctly stated the actual decree the court has made. The witness is requested to confine his answer to what he absolutely knows of his own knowledge.
680

A. I have of course seen the injunction, and as I recall it, it is not unqualifiedly in the language that you put it.

x Q. 49. Can you quote the language of it?

MR. HALE: Objected to upon the ground that the record or a certified copy of it may be easily produced and is the sole evidence

of what was adjudged and the witness is instructed that he is not compelled to answer this question.

MR. BEAN: The witness' knowledge as to the issuance of an injunction against his company is only sought in this question.

MR. HALE: The witness is requested to suspend his answer to this question until the question may be certified to the most convenient court to determine the propriety of the question, if counsel deem same material. 682

MR. BEAN: The witness declines to answer until instructed to answer by the court.

x Q. 50. If you have attached to your affidavit in this case copies of various letters received by you and your company from various people, will you please examine these exhibits and tell me how many of them refer either to Webster's New Standard Dictionary or Webster's New Illustrated Dictionary, published by the Syndicate Publishing Company, or Webster's New Century Dictionary, published by Cupples & Leon Company? 683

MR. HALE: Objected to on the ground that the letters speak for themselves.

A. There are three certainly, and the letter from F. E. Whittemore may or may not be that book, letter No. 36. The three referred to are letters Nos. 11, 16, and letters 18, 19 and 20, which refer to the same book; letter No. 41 may refer to that book. 684

x Q. 51. Are these all the letters which, so far as you know, you ever received regarding any dictionary of the English language which you yourselves did not publish? A. My opinion is we have received very many more.

x Q. 52. Have you not received inquiries about dictionaries which didn't have the name "Webster" in their titles asking if they could be purchased from you? A. I think not.

x Q. 53. Letter No. 11, to which you have referred, you say refers to the Webster's New Standard Dictionary published by the Syndicate Publishing Company. That dictionary has upon
 686 its title page, has it not, the statement that it is published by the Syndicate Publishing Company? A. Yes, it has the imprint of the Syndicate Publishing Company.

x Q. 54. Letter No. 20 from Emmett Sipe recites that the dictionary which he purchased from the Conne'llsville Courier was "Webster's New International Dictionary, limp leather, red edges, \$4, sold here for 98 cents." Was that dictionary, which is your latest unabridged, ever
 687 sold for 98 cents? A. No, the New International is not sold for 98 cents.

x Q. 55. Your dictionaries all bear a trademark of the Merriam Company which includes a wreath inclosing a monogram of the letters "N. W." do they not.

MR. HALE: Objected to upon the ground that it appears from the allegations of the bill as amended that all of the trade-marks registered by the Merriam Company do
 688 not include the wreath and the monogram referred to.

A. All the books that are published and owned by G. & C. Merriam Company bear the circle with the wreath and the monogram inside.

x Q. 56. Have you ever seen a dictionary published by either of these defendants or by any other publisher bearing any one of the trade-

marks of the Merriam Company? A. Yes, some so close imitations that we have objected to them.

x Q. 57. Have you ever seen or objected to any imitation or to the use of your trade-mark or the imitation thereof either by the Syndicate Publishing Company or the Cupples & Leon Company? A. No, except so far as they have used the trade-name, our trade-name "Webster's Dictionary."

690

x Q. 58. Do you use the word "trade-name" and "trade-mark" as synonymous? A. They are partly synonymous.

x Q. 59. Does your company claim a trade-mark in the name "Webster" taken by itself?

MR. HALE: Objected to upon the ground that the bill of complaint sets up certain specific registered trade-mark and charges infringement thereof and that is the best evidence of the claim of the company.

691

A. I am not prepared to answer that question.

x Q. 60. Why? A. Because without investigation I shouldn't be able to tell definitely just what our trade claims are.

x Q. 61. I did not ask you about your trade claims. To the best of your knowledge and recollection have you ever seen or heard of a claim to the trade-mark by your company in the name "Webster" taken by itself? A. I have not had that part of the business to attend to here and I couldn't answer that question without looking up the claims.

692

IT IS STIPULATED that the exhibits referred to and filed with or annexed to the affidavit of this witness which has been stipulated as his direct examination, shall also be deemed in evidence without further marking. These exhibits consist of: the Certificate of Copyright of the Crown

693

Kirk N. Washburn—Cross.

694

Dictionary; the Certificate of Receipt of copies thereof by the copyright office annexed to said affidavit of Kirk N. Washburn; also the exhibit referred to in said affidavit and in the cross-examination of this witness as "Complainant's Exhibit—Webster in the Courts"; also the exhibit referred to in said affidavit as "Complainant's Exhibit—Defendant's Advertisements."

x Q. 62. Noah Webster died in 1843? A. I believe so, yes.

x Q. 63. Since then this company has had various editors of its various Webster dictionaries? A. There is a long succession of editors.

x Q. 64. As you understand it they have based their work on the work of Noah Webster?

695

MR. HALE: Objected to unless the witness can answer from his personal knowledge.

A. I don't know. I am not in the editorial end of things.

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x Q. 65. Do you understand the dictionaries which you publish are called Webster's dictionaries because you publish them or because the first dictionary which the predecessors of the present company published, that is to say, the Webster's Dictionary of 1847, was a revision of the work of Noah Webster who had then recently died and subsequent dictionaries have been built up on that work?

MR. HALE: Objected to as immaterial.

A. We had by advertising made a name for Webster's dictionaries and it had become valuable as a trade-name and we continued publishing dictionaries as Webster's dictionaries because of that and

also because so much of the work as was available in the older books was used.

x Q. 66. That is to say, your dictionaries which you are now publishing are called Webster's dictionaries both because you and your predecessors have for a long time published dictionaries with the name "Webster's" in their title and because G. & C. Merriam in 1847 published a complete dictionary of Noah Webster? A. Yes, for both reasons. But it should be said that in the latest edition of the dictionary, the New International, comparatively little of Noah Webster's work exists. 698

x Q. 67. By that you mean that the latest Webster's Dictionaries which you publish are to a large extent the work of other lexicographers than Noah Webster? A. Certainly, because the language has grown immensely since those days and it necessarily follows.

x Q. 68. It is not then primarily because of the Websterian quality in your dictionaries that you now call them "Webster's," but because you have always called them Webster's Dictionary? A. Because "Webster's" has become a valuable trade-name. 699

x Q. 69. Do you think that Noah Webster could in any proper sense be called the editor of any one of the more recent editions of your Webster's dictionaries? A. I don't see how he could since he has been dead for sixty years.

MR. BEAN: I now offer Webster's Condensed Dictionary the Reilly & Britton Company, G. & C. Merriam Company, 1910, copyrights by G. & C. Merriam & Company and G. & C. Merriam Company, 1884, 1906, 1909, which has been shown to the witness Kirk N. Washburn and to the witness Harris W. Baker, marking the same "Defendant's Exhibit—Complainant's Webster's Condensed Dictionary." 700

Re-Direct *Reverences* by Mr. Hall:

Re-D. Q. 70. In answer to the last few questions of Mr. Bonn I understood you to testify that the book known to-day and for many years last past as Webster's Dictionary is a book of almost totally different literary contents than any book with which Dr. Noah Webster had anything to do,—is that correct? A. It is.

792 Re-D. Q. 71. It is also true that the Webster's Dictionary of to-day and for many years last past are of almost totally different literary contents than the Webster's Unabridged Dictionary of 1847, which was the first edition published by the Merriam Company,—is that correct? A. It is.

Re-D. Q. 72. Mr. Bonn referred to a considerable number of dictionaries published in recent years under the name of "Webster" by publishers other than the Merriams. Do you know whether or not some of these books are not the same identical book with different titles but including the name "Webster"? A. I know that there are such books, with the exception of the Crown which was afterwards called something else, there have been one or two published in Chicago where the title has been changed.

793 Re-D. Q. 73. In other words there are not so many distinct dictionaries using the name "Webster" as might at first appear from the number of combinations of the word "Webster" in connection with other words? A. That is correct.

Re-D. Q. 74. Is it not also true that a number of these books that have thus used the name "Webster" are of the small, vest-pocket type? A. It is.

Re-D. Q. 75. So far as they go and to the extent of their contents, do the abridged Webster's dictionaries published by your company conform to the large unabridged dictionary from which they were respectively abridged and contain the same information and the same results of scholarship

and literary values? A. We live on your own side.

Re D. Q. 71. Is one or more of the numerous advertisements of Webster's New Standard Dictionary which are contained in "Compliment's Exhibit—Defendant's Advertisements,"¹ it is stated that your company had authorized to lay out the defendant's Webster's New Standard Dictionary and had offered a large sum; is that statement true in fact or substance, or is there any basis whatsoever for any such statement? A. There is absolutely no basis for any such statement.

Re D. Q. 72. It is exactly correct? A. Exactly correct.

Re D. Q. 73. Was there any offer of any kind or any negotiations of any sort made between the complainant and any one representing said Webb, Webster's New Standard Dictionary, to buy or acquire the same at any price or upon any terms? A. No negotiations of any kind which ever have ever been had looking to the purchase by G. & C. Merriam Company of the Synchrotype Publishing Company's books or any of them.

Re D. Q. 74. At any time? A. At any time.

Re D. Q. 80. Please state in such a detail as your present information will permit the extent to which the complainant's Webster's Dictionary has been used in the schools of this country or of other countries and the extent to which they have been approved by school boards, school superintendents or state legislatures or other officials? A. Some time ago I made a careful examination and found that not less than 500,000 of Webster's unabridged Dictionary have been purchased for use in the schools of this country. It has been made by law the standard in various states, including especially Wisconsin, and Minnesota, and a large percentage of our other states.

my certain knowledge put into schools; school dictionaries which are published under an arrangement with us by the American Book Company go into the schools; their work is done entirely with the schools and school boards and they hold contracts with entire states and with many counties in other states which call for exclusive use of Webster's school dictionaries. Notably

710 there have been recent state adoptions of Webster's Dictionaries, school dictionaries in North Carolina, South Carolina, a few years ago in Virginia, in Louisiana, Arizona, New Mexico. Many cities have adopted the school dictionaries and are supplying pupils with them. Notable examples of these are New York, Philadelphia, Cleveland, Ohio; Columbus has recently adopted it, and many other cities which I don't now recall. It would be difficult to find a school in which

711 Webster's dictionaries are not installed.

Re-D. Q. 81. This situation has existed for how many years? A. It has existed as long as I can remember and was in existence when I came here nearly twenty-seven years ago.

RE-CROSS EXAMINATION by Mr. Bean:

Re-x Q. 82. You would not say, would you, that a good many dictionaries bearing the name "Webster" in their titles are not used in the schools of the country which are published by other

712 houses than the Merriam Company? A. I have no exact information on that subject. My very strong impression is that such is not the fact.

Re-x Q. 83. Isn't it the fact that Webster's dictionaries not published by the Merriam Company are in use in the schools of Philadelphia? A. I don't know, but I don't think so.

Re-x Q. 84. Did not the Merriam Company know in the early part of 1909 of the publication by the Syndicate Publishing Company of the dictionary

bearing the title Webster's New Standard Dictionary and receive from said company copies thereof? A. Yes, I think so; I don't remember the date.

Re-x Q. 85. Does your company not distribute or license the distribution of some editions of your dictionary other than those bearing the imprint of the American Book Company which did not have your imprint on the title page? A. I think not, but I cannot answer that question specifically without investigation. 714

Re-x Q. 86. Is not the 1864 edition, the dictionary of 1864, the dictionary first copyrighted by you in 1864, sold either by you or under an arrangement with you by others, with the imprint on the title page simply published for the trade? A. It may be.

Re-x Q. 87. The copyright on the 1864 dictionary has expired, has it not? A. It has.

Re-x Q. 88. Is not that edition to which I referred a relatively cheap edition of an unabridged dictionary and a photographic reprint of the 1864 edition? A. It is not a photographic reprint. It is put out in a very cheap form. 715

RE-RE-DIRECT EXAMINATION by Mr. Hale:

Re-Re-D. Q. 89. Is not the trade edition of 1864 book which has been referred to in your last answer to Mr. Bean an edition prepared with an up-to-date supplement? A. It has an up-to-date supplement, yes. 716

Re-Re-D. Q. 90. So that the book as actually sold is not simply a reprint of the 1864 edition? A. That is right.

Re-Re-D. Q. 91. And upon its title page the nature and contents of the book is plainly described, is it not? A. It is.

Re-Re-D. Q. 92. When you first learned that the Syndicate Publishing Company was using the

717

Walter I. Boynton—Direct.

name "Webster" in the title of a dictionary in or about the early part of 1909, was not your company litigating with other infringers of your rights in the name "Webster's" as applied to dictionaries? A. It was.

Re-Re-D. Q. 93. And have you continuously prosecuted such litigations? A. We have.

Re-Re-D. Q. 94. Has that litigation yet been terminated by a final order and decree of the court?
718 A. I think not.

Re-Re-D. Q. 95. Do you know whether or not one of such suits is now pending in the Circuit Court of Appeals for the Sixth Circuit in Cincinnati? A. There is such a suit.

Re-Re-D. Q. 96. And you are daily expecting a decision? A. Yes, sir.

(Signature waived.)

719

DEPOSITION CLOSED.

WALTER I. BOYNTON, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. State your name, age, residence and occupation? A. My name is Walter I. Boynton; age,
720 thirty-eight years; I reside in the city of Springfield; I am a doctor of dental surgery.

Q. 2. Have you been more or less familiar with Webster's Dictionary in times past? A. I own one old large unabridged one that was put out some twenty years ago.

Q. 3. I take it you have been familiar with Webster's Dictionary? A. Yes, sir.

Q. 4. For how long have you been familiar with Webster's Dictionary? A. The one I own I think was published in 1888.

Q. 5. Do you remember Webster's Dictionary being used while you were a boy at school? A. I certainly do.

Q. 6. Was it used in the schools which you attended? A. It was.

Q. 7. Where did you go to school? A. North Amherst, Mass.

Q. 8. In your mind during the period of your acquaintance with it, what has been the reputation of Webster's Dictionary as a standard and authoritative work of reference? A. As far as I know it has been the accepted work of reference in the community in which I have lived; in fact it is the only dictionary with which I was at all familiar, the only dictionary we ever thought of. 722

Q. 9. Do you know who has been the publisher of the Webster's Dictionary to which you have just referred? A. I have known for the last sixteen years.

Q. 10. Who was that? A. G. & C. Merriam Company. 723

Q. 11. Do you remember an occasion in or about the month of December, 1909, when you were canvassed by an agent for Success Magazine? A. I remember distinctly being canvassed by Mr. Bond; I couldn't have told absolutely the month or date.

Q. 12. It was about that time in 1909? A. Yes, sir.

Q. 13. Please state what occurred upon that occasion? A. I returned from lunch somewhere in the vicinity of half-past one to quarter of two. I was in the operating room; the door opened in the reception room and I went out and Mr. Bond confronted me with a proposition for a renewal of my subscription for Success Magazine, for which I had subscribed for one or two years I guess. As we treat most solicitors I told him, no, I guessed not, that I would buy individual copies. As an in- 724

725

Walter I. Boynton—Direct.

ducement, he said they were offering a prize package with it, an inducement in the form of a dictionary, the Inter-Collegiate Dictionary.

- Q. 14. Did he give you the full name of the dictionary? A. I really couldn't say; I think he must have, because he said the Inter-Collegiate. Naturally when he spoke of that I thought of these people here. What brought it to mind was the
- 726 fact that some friends of mine had recently procured one of the Merriam's new dictionaries and I was not positive as to the last name but supposed it was the same book. I questioned him in regard to it and told him I didn't know they ever put out books under subscription in that way and I was very much surprised, because the book I had in mind, the mental comparison was, the book these friends of mine had recently procured—I knew that dictionary was sold in the vicinity of
- 727 \$5, and I think this was put out as \$1.49 bonus above the subscription price to the magazine. So I referred to it and I says, "Is it published by the G. & C. Merriam Company?" He says, "It must be; it is a Webster's dictionary." I says, "I never knew they put out one to go as a subscription dictionary, I didn't know they had ever put out a book only to go through the regular channels, and I was very much surprised because I supposed their works were all high-grade, standard works and they certainly couldn't put out the
- 728 book I had seen for that price." I told him I knew Mr. Washburn very well and H. W. Baker and O. M. Baker, and I suppose I might step to the telephone and call them up. Then I made the remark, "It is only \$1.49, I guess I will subscribe." That is virtually all the conversation there was. He says, "It must be, it is a Webster's dictionary."

Q. 15. Did you receive the book subsequently?
A. Yes.

Walter I. Boynton—Direct.

729

Q. 16. Was it the book entitled "Webster's Inter-Collegiate Dictionary? A. Yes, sir.

Q. 17. What was there about the proposition that specifically made you think it was a book published by G. & C. Merriam Company? A. The mere fact I spoke of it in the terms I did, that I didn't know they had put out a book as a subscription book for a bonus with a magazine subscription, that was the only thing, having virtually known the firm and the individuals, several of them, composing the firm, I had never known they put a book out to be put out under such circumstances. When I spoke of going to the 'phone Mr Bond made no objection so far as that went. He led me to believe, and I think believed himself the book was published by these people. He replied to me, he says "It must be, it is a Webster's Dictionary." 730

Q. 18. What particular part of the title of that dictionary brought the Merriam Company to your mind? A. The term "Webster." 731

Q. 19. You have spoken of a book which the Merriams published and sold at the price of \$5; do you know the title of that book? A. Yes, because I looked it up, I don't know whether the same night or two or three days after. These friends lived directly across the street and I was over there and I said, "Let me see your dictionary."

Q. 20. What is the title of that dictionary? A. I think it is Webster's Collegiate Dictionary.

Q. 21. Did you think you were to receive that book upon this subscription for Success Magazine? A. I did, until the next day or the day after it happened I went up in the car with Mr. Washburn—we live on the same street about four houses apart—and we got off the car and walked down and I says, "I didn't know before you put out dictionaries to be given as prize packages or bonus with a subscription to magazines." He says, "We don't." I says, "I subscribed for one through Mr. Bond 732

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Walter I. Boynton—Cross.

with Success Magazine." He says, "It is certainly not our dictionary."

Q. 22. What effect did the good reputation which Webster's Dictionaries have in your mind have to do with your making this purchase through Success Magazine? A. Simply led me to subscribe to it.

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Q. 23. Did you examine the book called "Webster's Inter-Collegiate Dictionary" before agreeing to buy it? A. No I did not. I did not see the book.

Q. 24. Upon what did you rely as an assurance that the book was worth purchasing? A. Upon the fact it was a Webster's Dictionary and Mr. Bond when I spoke to him about the G. & C. Merriam Company, he says, "It must be, it is a Webster's Dictionary."

735

CROSS EXAMINATION by Mr. Bean:

MR. BEAN: This entire deposition I object to as irrelevant and immaterial in either the case of G. & C. Merriam Company against the Syndicate Publishing Company or the G. & C. Merriam Company against Cupples & Leon Company because it relates to a dictionary published by neither of them and does not relate to a dictionary which is in issue in this suit.

736

xQ. 25. You say you did not see the dictionary until later? A. No, I did not.

xQ. 26. You were led to subscribe to it by what Mr Bond said? A. Yes.

xQ. 27. You understood him to represent the Success Magazine? A. Yes.

xQ. 28. Would you have reached the conclusions about the dictionary which you say you did reach if you had had an opportunity to examine the dic-

tionary and had seen that on its title page it bore the imprint of some other publisher than the G. & C. Merriam Company?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for a guess as to what the witness would have done under certain circumstances which did not exist.

738

A. After looking the book over I should have drawn the conclusion that I didn't care for the book.

x Q. 29. That is not what I asked you. Would you have drawn the conclusion which you say you did draw and which led you to purchase the book or subscribe for the magazine if you had seen the book and observed that upon its title page it was described as published by some other house than the Merriam Company? A. I shouldn't have subscribed to the book, if that is the answer you want. I had seen this other book with my wife across the street; we had this old edition of 1888 and I said "We need a new edition," and then I told her I had bought one.

739

x Q. 30. Wouldn't you naturally conclude if you saw the imprint of some other publishing house than the Merriam Company on the title page of the dictionary that such dictionary was not one of their publications? A. I probably would, but I didn't see the dictionary.

740

x Q. 31. My question was if you did, I am assuming you did. When you got the dictionary you looked at it? A. I did.

x Q. 32. And saw that it was published by some other publishing house than the Merriam Company? A Yes.

x Q. 33. And then you knew it was not the dictionary which you thought you were going to get? A. I certainly did.

x Q. 34. You say you were doubtful about its being one of their books, or surprised, because you had not supposed they sold their books as a bonus at any time, but only through the regular channels, is that right? A. That is right.

x Q. 35. You did not then know that some of their dictionaries they do dispose of as a bonus with subscriptions? A. I didn't know.

742 x Q. 36. You don't know now that they do it? A. I don't.

x Q. 37. Nor that they do it with a certain dictionary at a price less than one dollar? A. I don't.

x Q. 38. You remember, do you not, that the dictionary which you got is published by A. J. Saalfeld? A. I couldn't say who that book was published by.

743 x Q. 39. In your affidavit in this case you say you found upon its receipt that it was published by A. J. Saalfeld Company of Akron, Ohio? A. I couldn't say now; it has been some time.

x Q. 40. If you made that affidavit the 14th of December, including that statement, you have no doubt that is correct? A. I have no doubt.

x Q. 41. You have lived in Springfield a good while? A. Sixteen years.

744 x Q. 42. You say you happen to know very well personally several of the men connected with the Merriam Company? A. Reasonably so, yes, sir.

x Q. 43. So that you have known particularly well that they published Webster's dictionaries? A. Yes, sir.

x Q. 44. Up to the time you purchased this dictionary you did not know, I presume, that there were any Webster's dictionaries to be had that they did not publish? A. I did not.

x Q. 45. You knew nothing about whether they actually had or claimed to have exclusive— A. I will retract that last remark. I do remember

seeing in the paper—and that is what led me to make the remark to Mr. Bond and Mr. Bond practically assured me it was a Webster's—I do remember reading in the paper some time before about suits they had entered against other houses, and I suppose that is what made me skeptical when I spoke to Mr. Bond as I did in regard to the book.

x Q. 46. You didn't understand that Mr. Bond represented the publisher of the dictionary? A. I didn't know anything about it; he simply solicited subscriptions for Success Magazine and offered this as an inducement at the price. 746

x Q. 47. Apparently he didn't know what he was selling, and you didn't know what you were buying? A. It was apparent to me he did not know what he was selling, because when I questioned him he assured me it was.

x Q. 48. If he did, and it was not, then he didn't know? A. Evidently he didn't. 747

(Signature waived.)

DEPOSITION CLOSED.

GEORGE J. CLARK, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows: 748

DIRECT EXAMINATION by Mr. Hale:

Q. 1. State your name, age, residence and occupation? A. George J. Clark; residence, 131 Bowdoin Street; assistant teller of the Chicopee National Bank; age, twenty-six.

Q. 2. Are you also the clerk of the common council of the city of Springfield? A. Yes.

Q. 3. How long have you been acquainted with

Webster's Dictionary to a greater or less extent?
A. About sixteen years.

Q. 4. What has been the reputation of Webster's dictionaries, as you understood it, as reliable and standard works of reference? A. The very best of its kind.

Q. 5. Do you know the name of the publishers of the Webster's dictionaries to which you have referred? A. Yes.

Q. 6. What is it? A. G. & C. Merriam Company.

Q. 7. How long have you known the G. & C. Merriam Company as the publishers of Webster's Dictionary? A. I must have known them ten years.

Q. 8. Did you use one of the Merriam Company's Webster's dictionaries while in school? A. Yes, sir.

Q. 9. Where did you go to school? A. The public schools of Springfield.

Q. 10. You recently had occasion to purchase a dictionary from the Springfield Union, a newspaper of this city? A. I purchased one; I didn't purchase it myself; I had it purchased for me.

Q. 11. How did you come to purchase this dictionary? A. Saw the advertisement in the paper.

Q. 12. How was it advertised? A. As I read it it was Webster's Dictionary; as I knew the Webster's Dictionary I supposed it was a Merriam dictionary.

Q. 13. It was to be sold by coupons cut from the paper and a small cash payment? A. That is the idea.

Q. 14. What book did you think you were getting when you bought this book? A. I thought I was getting G. & C. Merriam's Webster's Dictionary.

Q. 15. Did you examine this book at or before the time you bought it? A. No.

Q. 16. Upon what did you rely as an assurance that the book was a dictionary worth purchasing and such as you would desire to have? A. I sized it up from the word "Webster's."

Q. 17. What did that word mean to you in that respect? A. I thought it was G. & C. Merriam's "Webster," because being right here in Springfield, I knew a new edition was about to come out and I thought they were unloading an old edition, 754 something of that sort.

Q. 18. Did you think that in connection with the price at which the newspaper offered it? A. Yes; that is what made me buy it.

Q. 19. You knew of course that this was a small or an abridged dictionary and not one of the large unabridged Webster's dictionaries? A. Yes, sir.

Q. 20. What connection did you think it had with the large standard Webster's Unabridged Dictionary? A. I didn't take that into consideration at all. 755

Q. 21. Do you know, except as you have been told, whether or not the book you bought from the Springfield Union is or is not a genuine Webster's Dictionary? A. I know it is not a G. & C. Merriam's Webster's.

Q. 22. You expected to get a G. & C. Merriam Company's dictionary? A. Yes, I did.

Q. 23. I show you a book entitled, "Webster's New Standard Dictionary," which has been offered in this case as "Complainant's Exhibit— 756 Cowles Dictionary," which Mr. Cowles purchased from the Springfield Union: is that a copy of the book which you purchased from the same paper? A. Yes, that is the same thing.

Q. 24. Did you ever hear of a book entitled the "Crown Dictionary"? A. No, not until recently.

Q. 25. You mean not until mentioned to you in connection with this suit? A. With this case.

Q. 26. When you bought this book called "Web-

mer's New Standard Dictionary" from the Springfield Union, did you intend to buy the book called the "Cross Dictionary," a copy of which I show you and which has been marked for subscription in this case, "Compliment's Exhibit A," referred to by M. W. Bates?"

233 Q. Yes: I object to that question as the witness has already testified he meant to buy a Russian Dictionary.

A. No, I do not think so.

Q. 27. Did the Cross Dictionary have any good reputation in your mind? A. I never heard of it.

234 Q. 28. Did you know at the time you bought this dictionary from the Springfield Union that more than one concern, that is concerns other than the Russians, published dictionaries under the name of Webster's Dictionary at that time? A. I know something about it, yes.

Q. 29. What did you know about it? A. I know they had been used as something of that sort and some concern was using the name "Webster."

Q. 30. Was that all you knew about it? A. That was all I knew.

Cross-Examination by the Court:

235 Q. 31. You have heretofore made an affidavit in this case, have you not? A. Yes.

Q. 32. I find that in that affidavit you said that you bought the dictionary from the Springfield Union, "thinking that, being called a 'Webster,' it was one of the genuine series of Webster's dictionaries." What do you mean by the term "genuine series?" A. I always considered the genuine Webster's Dictionary a R. & C. American Company's dictionary.

Q. 33. When you think the genuineness of a

Webster's Dictionary depends upon its house of publication? A. No, no, no.

Q. 18. Prospective of whether it is or is not based upon the work of Noah Webster? A. I don't get quite what you mean.

Q. 19. You have said that in your mind the genuineness of a Webster's Dictionary depends upon its house of publication. Is that your opinion irrespective of whether a Dictionary is or is not based upon the work of Noah Webster? A. [57]
No, you mean whether it is based on the original work of Noah Webster?

Q. 20. I am asking whether the house of publication would control the genuineness, in your mind, of a Webster's Dictionary irrespective of whether it was based on the work of Noah Webster or not? A. Yes, I do.

Q. 21. So that if the Merriam Company should publish a Dictionary which was not based on the work of Noah Webster you would still think it was genuine? A. I would. [58]

Q. 22. You never know just exactly who has the Merriam Company published Webster's Dictionary, except you are you know something about there being some litigation between them and somebody else? A. I read it in the paper.

Q. 23. That is all you know about it? A. That is all I know.

Q. 24. You don't know how long it has been [59]
length of time, other publishers have published so-called Webster's Dictionaries, do you? A. No, I don't know.

Q. 25. You were asked what you knew of the reviving of Webster's Dictionary and you said as part of your answer: "It is the work of England." What does he say more? A. Of course I don't know more about Dictionary, but I think if I don't

taking it from G. & C. Merriam's dictionary it was the very best I could get.

x Q. 42. That is you think they as publishers get out the best English dictionary? A. I do.

x Q. 43. Irrespective of whether they call it the Webster's or anything else? A. Yes.

x Q. 44. You didn't look at the dictionary either before or when you bought it? A. No.

766 x Q. 45. When did you first find it was not published by the Merriam Company? A. I should say about a week after I got it, inside of a week after I had it in my hands.

x Q. 46. Who told you it was not published by them? A. I recognized it myself.

x Q. 47. Then you did look at it some time? A. I did.

x Q. 48. At the title page? A. Yes.

767 x Q. 49. You then saw it was published by the Syndicate Publishing Company? A. I didn't notice that so much as it was not G. & C. Merriam.

x Q. 50. You noticed it had the name of some other publisher than the G. & C. Merriam Company on the title page? A. Yes, sir.

x Q. 51. You noticed also, did you not, that the title page stated it was based on the unabridged dictionary of the English language of Noah Webster? A. No, I don't know as I did.

768 x Q. 52. Looking at the Cowles dictionary which you have identified as like the one you purchased, you find that statement, do you not, "Based on the unabridged dictionary of the English language of Noah Webster," you notice that statement do you not? A. Yes, sir.

x Q. 53. That was on the dictionary which you purchased? A. Yes, undoubtedly.

x Q. 54. If anybody else than the Merriam Company should publish a reprint of a dictionary which they had published, would you or not consider that a genuine "Webster"?

George J. Clark—Re-direct.

769

MR. HALE: Objected to as irrelevant and immaterial, because concededly defendant's dictionaries are not reproductions or reprints of any previous genuine Webster dictionary.

A. I would not.

RE-DIRECT EXAMINATION by Mr. Hale:

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Re-D. Q. 55. I show you a dictionary entitled "Webster's New Century Dictionary," which has been marked in this case "Complainant's Exhibit C, referred to by H. W. Baker," and ask you if you intended to buy or thought that you did buy that book from the Springfield Union when you bought the other book entitled, "Webster's New Standard Dictionary"? A. No, I did not.

Re-D. Q. 56. I ask you if you know whether the three books entitled respectively the "Crown Dictionary," "Webster's New Century Dictionary," and "Webster's New Standard Dictionary," all of which have been shown you, are substantially the same book printed from the same plates? A. No, I did not. 771

RE-CROSS EXAMINATION by Mr. Bean:

Re-x Q. 57. When you purchased a dictionary from the Springfield Union you simply meant to buy the dictionary they were offering for sale? A. No; I knew that Mr. Plummer and Mr. Baker were good friends and I knew a new dictionary was coming out and I thought they might have had some old plates or something of that sort and run out the edition, or else had them on hand and wanted to get rid of them before the new edition came out and this was a good way to get rid of them and get something for them. 772

Re-x Q. 58. You thought the price was so low

773

George J. Clark—Re-Re-direct.

that it couldn't be a price at which the Merriam Company would sell the dictionary unless to get rid of some old ones? A. I thought that was the idea.

Re-x Q. 59. You have not known, I presume, that the Merriam Company in fact sells one of its dictionaries as a premium with newspapers, have you? A. No, I knew nothing about that.

774 Re-x Q. 60. At a price exactly or approximately the same as that at which this was sold? A. I knew nothing about that.

RE-RE-DIRECT EXAMINATION by Mr. Hale:

Re-Re-D. Q. 61. Did you suppose that any Webster dictionary published by the Merriam Company was worth the price asked by the Springfield Union for the book which you bought? A. I knew they had a pocket edition of
775 course, that was a cheap book; but from what I had seen of this pictured in the paper I believed it was a larger book and gave more words.

Re-Re-D. Q. 62. That made you think it was still more worth buying at the price? A. Yes, sir.

RE-RE-CROSS-EXAMINATION by Mr. Bean:

Re-Re-x Q. 63. When did you say you bought this dictionary? A. I should say along in the
776 early fall.

(Signature waived.)

DEPOSITION CLOSED.

(Adjourned to Saturday, February 24, 1912, at 10 o'clock A. M.)

Saturday, February 24, 1912.

Met pursuant to adjournment at 10 o'clock A. M. at the office of the G. & C. Merriam Company.

PRESENT:

THE SPECIAL EXAMINER.

WILLIAM B. HALE, Esq.,

778

Counsel for Complainant.

No appearance for either defendant.

CHARLES ROGERS, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Charles Rogers; sixty-one years and a half; 7 Locust Street, Springfield, Mass. I am retired from business.

779

Q. 2. What was your business before you retired? A. I was a tradesman, that is a store keeper, an optician and sold photographing supplies, known as Charles Rogers of Springfield; now the business is known as Charles Rogers & Company.

Q. 3. The business was conducted in Springfield, Mass? A. Yes, sir.

Q. 4. In times past have you been more or less familiar with Webster's Dictionary? A. More or less, yes, sir.

780

Q. 5. For how many years? A. I should say quite familiar for twenty years.

Q. 6. You have known of it but not so familiarly going back how far? A. There are only two dictionaries I ever knew anything about, Webster's and Worcester's.

Q. 7. You knew of both these dictionaries when

you were a young man? A. Yes, about thirty years ago.

Q. 8. During this period what has been your understanding as to the reputation and authority of Webster's Dictionary as a book of reference? A. As the best one.

782 Q. 9. Do you know who was publisher of the Webster's Dictionary to which you have just referred? A. I recognized the Merriams to be the handlers of that dictionary and the developers of it, whether they were the originators of it I would not be sure.

Q. 10. During the fall of the year 1911, did you purchase a dictionary from the Springfield Union, a newspaper of this city? A. I did.

Q. 11. What was the name of that dictionary? A. Webster's New Standard Dictionary.

783 Q. 12. I show you a dictionary which has been offered in evidence and which was the book purchased by Mr. Clinton W. Cowles from the Springfield Union and ask you if that is a copy of the book which you purchased? A. It is the identical thing.

Q. 13. When you bought this book what book did you expect to buy and believe you did buy? A. I believed I was buying a book which was issued by the Merriam folks. No doubt of it crossed my mind.

784 Q. 14. What made you think you were getting a book published by the Merriams? A. From a business enterprise, that it was issued on account of a probable increase or extension of business, that was my impression.

Q. 15. What was there about the name or title of the book that led you to think it was one of the books published by the Merriams? A. The name and title of the book represented the Merriams to me.

Q. 16. What particular word in the title more especially. A. "Webster."

Q. 17. At the time you bought this book did you know that any other persons beside the Merriams were issuing dictionaries described as "Webster's Dictionaries"? A. No, sir.

Q. 18. Did you ever hear of a dictionary called the Crown Dictionary? A. No.

Q. 19. I show you a dictionary entitled the "Crown Dictionary," which has been marked for identification, "Complainant's Exhibit A, referred to by H. W. Baker," and ask you if you ever saw that book before or knew anything about it? A. I should say not, sir. 786

Q. 20. When you bought Webster's New Standard Dictionary from the Springfield Union, did you intend to buy from that paper the book called the Crown Dictionary? A. No. What do you ask me that for?

Q. 21. Did you know at that time that you did in fact buy the book called the Crown Dictionary? A. No. 787

Q. 22. Did you know the book which you bought entitled, "Webster's New Standard Dictionary," is printed from the same plates as the book shown you and which is called the "Crown Dictionary"? A. No.

Q. 23. I also show you a book entitled, "Webster's New Century Dictionary," and ask you if you intended to buy that book from the Springfield Union and thought you were buying it? A. I couldn't answer that. 788

Q. 24. What bearing did the good reputation of the Merriam Company's Webster's dictionaries have with you in deciding to buy this book from the Springfield Union? A. That is simple of course; the Merriam's dictionary was a standard work, and when you ask me why I bought it from the Union I have told you already what I bought

789

Kirk N. Washburn, Jr.—Direct.

it from the Union for, on account of the price and its apparent convenience.

Q. 25. Did you examine the book at or before the time you bought it? A. No.

Q. 26. Upon what did you rely as an assurance that it was a good book? A. By its title, "Webster's Dictionary."

790

NO CROSS-EXAMINATION.

(Signature waived.)

DEPOSITION CLOSED.

KIRK N. WASHBURN, Jr., a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

791 DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your full name, age, residence and occupation? A. Kirk N. Washburn, Jr., thirty; 37 Pineywoods Avenue, Springfield; lexicographer.

Q. 2. You are employed in the editorial department of the G. & C. Merriam Company in the preparation of their dictionaries? A. I am.

Q. 3. How long have you been so employed? A. Eight years.

792 Q. 4. Have you examined to any extent the book known in this case as Webster's New Standard Dictionary published by the Syndicate Publishing Company? A. I have.

Q. 5. Will you please look at that book which has been offered in evidence, and I show you the copy marked "Complainant's Exhibit B referred to by H. W. Baker," and point out any words which are mis-spelled or improperly or inadequately defined, giving your reasons for any answer which

you may make? A. The word *Yiddish*, on page 872, is defined as "a kind of composite language spoken by foreign Jews in England." Aside from the inadequacy of "a kind of composite language," as a characterization of what is well known to be a Middle German dialect developed under Slavic and Hebrew influences, it is most curious that the author restricts the use of Yiddish to foreign Jews in England. It is hard to see how anyone could be ignorant of the fact that there is a very large Yiddish speaking population in New York City, with Yiddish newspapers and a very flourishing Yiddish theatre. There is no question that Yiddish is spoken by a number of times as many people in the United States as in England. 794

The word *tilde*, on page 809, is defined as "A mark (—) paced over *n* in Spanish words to indicate that the vowel following it is to be sounded as a 'y' ". This statement is false and inaccurate, as the tilde really indicates that the following vowel is to be sounded as if preceded by "y." 795

A *Turkish* bath, on page 830, is defined as "A hot air bath." Certainly no one who had ever taken one could so define it.

Billiards, on page 116, is defined as "A game played on a rectangular cloth-covered slate table, 12 ft. x 6 ft. in size, with ivory balls and a cue." This definition evidently refers to the English billiard table, the standard size of which is 12 ft. x 6, but should add that the table as used in England has six pockets. The standard size in the American table is 10 ft. x 5 ft., and a large majority of American tables are still smaller. 796

The word *lac*, upon page 482, has as one of its definitions, "100,000 rupees equals \$500,000 (about)." As the actual value of 100,000 rupees is in the vicinity of \$32,400, the author's estimate of \$500,000 is grossly inaccurate.

Pasteurize, upon page 588, is defined as "To

inoculate with the bacillus which produces a specific disease." This would hardly cover the use of the word in "Pasteurized milk."

Viscera, is defined as "The intestines." The word has never been so limited either in Latin or in English, but applies to all the internal organs, lungs, heart and stomach, as well as the intestines.

798 *Oxygen*, upon page 576, is defined as "A colorless, inodorous gas which with nitrogen and argon constitutes one-fifth by volume of the atmosphere and in combination with hydrogen forms water." Oxygen and nitrogen together constitute more than 95 per cent. of the air, so that the author's estimate of one-fifth is grossly inaccurate. This is inconsistent with other parts, because nitrogen is said, on page 555, "to constitute four-fifths by volume of the atmosphere."

799 *Perlsh*, on page 590, is defined as "An impure carbonate of potash." As a matter of fact potash is itself a carbonate. The author, had he known any chemistry at all, would have said an impure carbonate of potassium.

Paralysis, on page 583, is defined as "Loss of the power of sensation of one or more parts of the body, palsy." This is entirely inadequate as it represents only one form of paralysis, the commoner form being motor paralysis in which loss of the power of motion occurs.

800 *Kaften*, upon page 477, is defined as "kind of vest worn in oriental countries." "A kind of vest" can hardly be regarded as adequately descriptive of a garment that is in reality a long gown belted at the waist.

In the "Table of Familiar Allusions."

Consols are defined as "English public securities at 3%." This information is somewhat inadequate as it has been 24 years since consols, or consolidated annuities, have borne 3% interest.

Any business man knows that the present rate is $2\frac{1}{2}\%$.

Missouri Compromise is said to have "prohibited slavery north of $36^{\circ} 30'$ north." If this were true, by the Missouri Compromise slavery would have been prohibited in Virginia and Kentucky! The true fact is the Missouri Compromise prohibited slavery west of the Mississippi River and north of $36^{\circ} 30'$ north, with the exception that slavery was to be permitted in Missouri. 802

Labyrinth is defined as "A celebrated structure in ancient Egypt. A maze of difficulties so called from an inextricable series of winding passages constructed by Minos, King of Crete." This is an utter hash of facts. Curiously enough the word is defined with reasonable correctness in the main vocabulary of this same book.

Lloyds is defined as "Rooms in London resorted to by bankers and brokers." Here again every business man knows that Lloyds is a concern whose main business is marine insurance. 803

In the "Table of Foreign words, Phrases, Proverbs, Quotations and Colloquial Expressions" the French phrases are printed without the accents, which are an essential part of French spelling.

Illustrations are *a bas*, in which the "a" should have a grave accent.

Charge d'affaires, where the "e" of "charge" should have, but has not, an acute accent. 804

Entree, in which the first "e" should have an acute accent.

Fete champetre, which should be written "fête champêtre."

In this table one notices the phrase "*ma fois*" defined as "upon faith." Here the author got the wrong word, "fois" being the word for

805

Charles P. Crossman—Direct.

“time,” as deux fois, two times. The word wanted here is “foi.”

Felo de se, is marked French. Any one knowing any French would know at sight that this is not and could not be French.

Bon soir is marked Latin.

Sartor Resartus is defined as the “cobbler mended.” This is a sheer blunder undoubtedly due to the author’s mistaking the Latin word

“sutor,” cobbler, for “sartor,” tailor.

In the table of “Familiar Allusions,” we find *Black Friday* given as September 26, 1869. Neglecting the fact that this is only one of the Black Fridays, one may well object that September 26, 1869, was not a Friday but a Sunday; the date desired being September 24.

(Signature waived.)

807

(NO CROSS-EXAMINATION.)

DEPOSITION CLOSED.

CHARLES P. CROSSMAN, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

808 DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Charles P. Crossman; residence, 15 Amherst Street, Springfield, Mass.; occupation, I am a member of the firm of Morgan, Crossman & Company, who are manufacturers of rubber stamps and stamp goods; age, fifty-three.

Q. 2. Have you been acquainted more or less with Webster’s dictionaries in times past? A. Yes, sir.

Q. 3. For about how long have you known of Webster's dictionaries? A. Ever since I was old enough to know about any dictionary.

Q. 4. During this period what has been your understanding of the reputation and standing of Webster's Dictionary as a work of reference? A. My understanding is that it was a standard publication, it was the standard dictionary of the country. If I recall it was advertised as used 810 by the United States Government.

Q. 5. That was many years ago? A. Yes, when I was a young man.

Q. 6. In the fall of 1911 did you have occasion to purchase a dictionary from the Springfield Union, a newspaper of this city? A. I did get one.

Q. 7. What was the name of the dictionary which you purchased from the Springfield Union? A. I did not look at it carefully enough 811 to be able to state the exact name.

Q. 8. Give the name as nearly as you can recollect it? A. I merely noticed it was a Webster's dictionary.

Q. 9. What book did you think you were getting and what book did you intend to get when you bought this book from the Springfield Union? A. I presumed I was getting one of the Merriam publications, Webster's Dictionary.

Q. 10. What made you think that? A. Because 812 it is a local publication; you would naturally expect that a local paper offering them would offer a local publication in preference to any other.

Q. 11. What made you think it was a local publication? A. Because it was offered by a local newspaper.

Q. 12. Have you known of the book called "Webster's International Dictionary"? A. Yes.

Q. 13. What connection did you think there was between this book which you bought from the

813

Charles P. Crossman—Direct.

Springfield Union and Webster's International Dictionary, previous to your obtaining it or at the time? A. I supposed they were published by the same party.

Q. 14. What made you think that? A. Because the name of "Webster" was associated with both.

814

Q. 15. At that time did you know that any concerns other than the Merriams were publishing dictionaries under the name of Webster's Dictionary? A. No.

Q. 16. Have you a copy of any Webster's dictionary published by the Merriam company? A. Yes.

Q. 17. What book is that? A. Webster's International Dictionary.

Q. 18. Upon what book is your good opinion of Webster's dictionaries principally based? A. It is based on the one I had, Webster's International Dictionary.

815

Q. 19. You have used that book with satisfaction to yourself for how many years? A. Might be eight or ten years, I am not at all sure when I bought the book—I am speaking of Webster's International Dictionary which I have at home.

Q. 20. Did you see this book which you bought from the Springfield Union advertised? A. I think so.

Q. 21. And that advertisement was what led you to purchase it? A. It may have been.

816

Q. 22. If the book advertised and sold by the Springfield Union had not been called Webster's Dictionary, would you have bought it? A. No.

Q. 23. Why not? A. Webster has always been associated in my mind in connection with a dictionary; I never had any particular interest in any other.

Q. 24. Suppose the book had been called Worcester's Dictionary, how would that have affected

you? A. I don't think it would have attracted my attention.

Q. 25. Why not? A. The reason would be because I was acquainted with "Webster" and not with "Worcester."

Q. 26. I presume you are not an expert on dictionaries? A. No; I am willing to make that confession.

Q. 27. Did the low price at which the Springfield Union offered this book impress you in any way? A. Possibly the price and the name perhaps induced me to buy it. 818

Q. 28. How did you explain to yourself the extremely low price at which the newspaper offered to sell this book? A. I did not explain it.

Q. 29. Did anything occur to you as to any trade arrangement having been made between the Springfield Union and the Merriam Company in regard to this dictionary? A. I presumed that they had made some arrangement with the Merriam people to offer it at the price they did, at what seemed to be a low price. 819

Q. 30. You are the same Charles P. Crossman who previously made an affidavit in this case on behalf of the complainant G. & C. Merriam Company? A. Yes.

Q. 31. And that affidavit was verified on the 27th day of December, 1911? A. I think that was the date.

Q. 32. About how long have you known the Merriams as the publishers of Webster's dictionaries? A. I should think since about 1877. 820

Q. 33. Did you ever hear of a book called the Crown Dictionary previous to buying this one? A. No, I have no recollection of it.

Q. 34. I show you a dictionary entitled the Crown Dictionary marked in this case "Complainant's Exhibit A, referred to by H. W. Baker,"

821

Charles P. Crossman—Direct.

and ask you if you ever saw that book before?

A. I don't think so.

Q. 35. When you bought this from the Springfield Union did you intend to buy the dictionary entitled the Crown Dictionary which has been shown you? A. No.

Q. 36. Did you know that you were in fact buying the Crown Dictionary which has been shown
822 you? A. No.

Q. 37. If this dictionary advertised and sold by the Springfield Union had been advertised and sold under the name of the Crown Dictionary, would you have been attracted to it and would you have bought it? A. I don't think so.

(Signature waived.)

(NO CROSS-EXAMINATION.)

823

DEPOSITION CLOSED.

MR. HALE: The complainant now offers in evidence the books compared by H. W. Baker and referred to by him in his testimony and which were identified by him, and the same are marked respectively, "Complainant's Exhibit A, referred to by H. W. Baker"; the next one, "Complainant's Exhibit B, referred to by H. W. Baker"; and "Complainant's Exhibit C, referred to by H. W. Baker"; said exhibits being respectively the
824 Crown Dictionary, the Webster's New Standard Dictionary and the Webster's New Century Dictionary.

IRVING S. PULCIFER, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please give your name, age, residence and occupation? A. Irving S. Pulcifer; 21 Blake Hill, Springfield, Mass., age, forty-two; occupation, assistant treasurer of the Springfield Safe Deposit & Trust Company.

826

Q. 2. Are you also a member of the school board of the city of Springfield? A. Yes, sir.

Q. 3. How long have you been a member of the school board? A. A little over two years.

Q. 4. In times past have you been more or less familiar with Webster's dictionaries? A. I have.

Q. 5. Approximately how long? A. I have owned one, the International, for fifteen years or ten years. I have owned the old Webster's International for ten years, may be fifteen. I got it soon after it came out.

827

Q. 6. What has been your understanding of the reputation and authority of Webster's Dictionary as a work of reference during the period you have known of it? A. I have considered it a standard, by that I mean of course standard authority.

Q. 7. Are the Webster dictionaries used in the public schools of Springfield? A. They are.

Q. 8. How long have they been used there if you know? A. I don't know, but certainly during all my school life they were in use.

828

Q. 9. Were you educated in the schools at Springfield? A. I was, yes, sir.,

Q. 10. And the Webster dictionaries were used in the schools at that time and are now used? A. I know that they have been used for thirty-two years.

Q. 11. In the fall of 1911 did you have occasion to purchase a dictionary from the Springfield Union, a newspaper of this city? A. Not personally I didn't; I authorized the purchase of one.

Q. 12. Whom did you direct to purchase the dictionary for you? A. One of the clerks in the bank.

Q. 13. How did you come to make this purchase? A. By reason of the advertisement that appeared in the Springfield Union.

Q. 14. What was there about that advertisement which attracted you to make the purchase?

A. The fact that a Webster's dictionary was selling for so small a price.

830 Q. 15. What Webster's Dictionary did you think was being advertised and sold by the Springfield Union? A. The only Webster I ever knew about; I assumed that it was a Merriam publication.

Q. 16. What was there about the advertisement that caused you to assume that it was a Merriam publication? A. The word "Webster."

831 Q. 17. I show you a dictionary entitled "Webster's New Standard Dictionary" and ask you if that is the identical dictionary which you purchased under the circumstances related? A. It certainly is.

MR. HALE: The dictionary identified by the witness is offered in evidence and marked "Complainant's Exhibit—Pulcifer's Dictionary.

Q. 18. Did you examine this book at or before the time you bought it? A. I did not.

832 Q. 19. Upon what did you rely as an assurance that it was a dictionary worth buying? A. The word "Webster."

Q. 20. How did that name convey such assurance to your mind? A. Simply because I had known that the Webster's Dictionary was accepted as standard authority, in these parts at least, practically all my life.

Q. 21. At the time you bought this book did you know that there were any other persons than the Merriams who published dictionaries under

Irving S. Pulcifer—Direct.

833

the name or title of "Webster's Dictionary"?

A. I did not.

Q. 22. About how long have you known the Merriams as the publishers of the Webster dictionaries to which you have referred as standard authorities? A. As long as I have known about the dictionary.

Q. 23. Did you ever hear of a dictionary called the Crown Dictionary? A. I did not.

834

Q. 24. I show you a dictionary entitled the "Crown Dictionary," which has been marked in evidence in this case as "Complainant's Exhibit A, referred to by H. W. Baker," and ask you if you intended to buy that book when you purchased the book called "Webster's New Standard Dictionary" from the Springfield Union? A. Most certainly not.

Q. 25. If the Springfield Union had advertised their book under the name of the "Crown Dictionary" instead of under the name "Webster's New Standard Dictionary," would you have bought it? A. I would not.

835

Q. 26. Why not? A. Merely because I desired a dictionary that I could consult as authority and not knowing anything about the standing of the so-called Crown Dictionary I certainly never would have purchased it.

DEPOSITION CLOSED.

Signature waived.

836

NO CROSS-EXAMINATION.

EDWARD KRONVALL, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Edward Kronvall; occupation teller of the Springfield Safe Deposit & Trust Company; twenty-six years old; 42 Sylvan Avenue, Springfield, Mass. .

838

Q. 2. Where did you go to school? A. East Longmeadow, Mass.

Q. 3. Have you been more or less familiar with Webster's dictionaries in times past? A. Yes, I have in the schools of course.

Q. 4. And since have you heard of it? A. Yes. I have heard of it since and seen references to it.

Q. 5. What has been your understanding of the authority and reputation of the Webster's Dictionary to which you have referred? A. I always thought of Webster as being the authority; I suppose there were other dictionaries, but I always thought of Webster as being the highest authority.

839

Q. 6. Did you know the name of the publisher of the Webster dictionaries to which you have referred and which you used at school? A. I cannot say that I did while I was going to school, but since then I knew that G. & C. Merriam Company published the Webster's Dictionary and I supposed they were the only publishers of Webster's Dictionary .

840

Q. 7. In the fall of 1911 did you have occasion to purchase a dictionary from the Springfield Union, a newspaper of this city? A. Yes, sir.

Q. 8. How did you come to make that purchase? A. I saw it advertised in the daily Union, by cutting out six coupons and then with a deposit of a certain amount of money, I would be given a Webster's Dictionary.

Q. 9. You accordingly purchased one on those terms? A. Yes.

Q. 10. What book did you intend to buy and think you did buy when you bought this book from the Springfield Union? A. I intended to buy Webster's Dictionary; I thought that I got a Webster's.

Q. 11. What effect on your mind did the high reputation of the Webster dictionaries which you have known have in making this purchase? A. If it had been some other dictionary that they advertised I shouldn't have made the purchase. 842

Q. 12. Did you ever hear of a dictionary called the Crown Dictionary before this suit? A. Yes, I have.

Q. 13. When and where? A. A few years ago, I cannot tell just how many years, I subscribed for the Christian Herald for my mother, and at that time one of the premiums that the Christian Herald offered was, with an additional payment of fifty cents, a Crown Dictionary; they advertised it as the Crown Dictionary, as I remember it. 843

Q. 14. I show you a dictionary entitled the Crown Dictionary, with the imprint of the Christian Herald, "Complainant's Exhibit A, referred to by H. W. Baker," and ask you if you recognize that as the book referred to? A. Yes, sir, I have one down at the house now.

Q. 15. When you bought this dictionary called Webster's New Standard Dictionary from the Springfield Union did you intend to buy a copy of the Crown Dictionary such as you already have? A. No; I intended to buy a Webster's Dictionary; of course that flowery advertisement led me to think it was a regular \$3.50 or \$4 book. 844

Q. 16. You are the Mr. Edward Kronvall who made an affidavit in this case on behalf of the complainant? A. Yes.

845

Edward Kronvall—Direct.

Q. 17. On the 27th day of December, 1911? A. Yes, sir.

Q. 18. Since making that affidavit have you been interviewed by any one representing either the defendant or the Springfield Union? A. I have by a representative of the Union; I don't recall his name.

Q. 19. What took place on that occasion? A. He offered to refund the purchase money if I was dissatisfied.

Q. 20. What did you do? A. I returned the dictionary and he gave me back the money. I told him the dictionary was of no use to me, that if he was willing to take it back and return me the money I would return the book.

Q. 21. Had you used the book at all before you returned it or attempted to do so? A. Yes.

Q. 22. Did it prove satisfactory in use? A. It did not. I recall that during the McNamara trial in California we were interested to know the exact meaning of certain words; among them being "venire" and "talesmen" and some other word that I don't now recall. I looked for them in this dictionary but could not find them. I was surprised that such words were not to be found in a Webster's Dictionary.

(Signature waived.)

848

*NO CROSS-EXAMINATION.**DEPOSITION CLOSED.*

(Special Examiner's Certificate, and Notice of taking Deposition, Not Printed by Consent.)

DISTRICT COURT OF THE UNITED
STATES,

849

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

vs.

CUPPLES & LEON COMPANY,
Defendant.

Equity
8-161.

850

G. & C. MERRIAM COMPANY,
Complainant.

vs.

SYNDICATE PUBLISHING Co.,
Defendant,

Equity
8-162.

851

SPRINGFIELD, MASS., March 28, 1912.

1.30 o'clock, P. M.

APPEARANCES:

The Special Examiner, JOHN F. JENNINGS,
WM. B. HALE, Esq.,

For Complainant.

852

GEORGE F. BEAN, Esq.,

For both Defendants.

Depositions taken on behalf of the complainant for final hearing pursuant to notice annexed, before John F. Jennings, Esq., a Special Examiner of this Court, pursuant to the sixty-seventh rule in equity as amended, at the office of Messrs. G. & C. Merriam Company, in the

853

Kirk N. Washburn—Direct.

city of Springfield, Massachusetts at 1.30 o'clock, P. M.

It is hereby stipulated between the counsel for the respective parties that the depositions of the witnesses to be called shall be taken stenographically by a skillful stenographer, appointed by the Special Examiner, and subsequently transcribed and reduced to typewriting.

854 It is further stipulated that the signatures of each and all witnesses thus examined shall be and hereby are waived.

KIRK N. WASHBURN, recalled on behalf of complainant, having been sworn, testified as follows:

Q. 1. Are you the Kirk N. Washburn, who has been heretofore sworn and examined in this case
855 on behalf of complainant? A. I am.

Q. 2. Will you produce copies of the various editions of Webster Dictionaries, beginning with the first edition in 1806 and continuing down to the present date? A. I do, right here.

The complainant offers in evidence the title pages, copyright notices and inscriptions upon the cover of said dictionaries and the same are received in evidence and marked
856 "Complainant's Exhibit, Title Pages, Cover Inscriptions and Copyright Notices of Webster Series."

Q. 3. Do you know about how many volumes there are? A. I do, there are fifty-five volumes, more or less, as I recall it.

Complainant also offers in evidence copies of certain contracts and assignments to Complainant's predecessors as follows:

"Webster Contract of 1853."

Kirk N. Washburn—Direct.

857

"Lippincott Contract 1858."

"Contract and assignment of the University and Pocket Dictionaries."

"Contract and assignment of Webster High School Dictionary."

"Contract and assignment of Webster's Academic Dictionary."

"Delegation of Power to Executor by Heirs."

858

"Contract between Heirs and G. & C. Merriam Company as to Abridged Dictionary."

All bound in a pamphlet and the same is received and marked in evidence, "Complainant's Exhibit, Early Contracts and Assignments."

Complainant offers in evidence certified copies and agreed copies of the record of copyright of the said Webster Dictionaries, produced, beginning with the 1806 edition and continuing down to date, and the same all bound in one pamphlet are received and marked in evidence, "Complainant's Exhibit copyright certificates of Webster Series."

859

Q. 4. Please state somewhat in detail the schools of this country which have adopted the Complainant's Webster Dictionaries, or any of them, as the standard authority for use in such schools and show generally the extent to which Complainant's dictionaries have been used as the standard authority in the schools of this country.

A. In Alabama, we have a state adoption, made September 8th, 1908, for five years by a state text-book commission and this adoption is for exclusive use.

860

In Alaska, Webster Primary Dictionary has been adopted.

In Arizona adoption by the Territorial Board

of Education in July, 1911, for four years, for exclusive use.

In California the official List High School text-books prepared and recommended by the State Board of Education, June, 1911, as provided by law, includes Webster's High School Dictionary and Webster's Academic. No other dictionaries are mentioned.

- 862 In Delaware the official list of text-books issued by authority of State Board of Education, includes Webster's Primary Dictionary, Webster's Common School, Webster's High School, Webster's Academic, and Webster's New International Dictionary. Other dictionaries are mentioned.

- 863 In the District of Columbia, text-books adopted June 5th, 1911, by the Board of Education for three years, from July 1, 1911, include Webster's School Dictionaries, American Book Company, Webster's Collegiate and Webster's New International Dictionary, G. & C. Merriam Company. Worcester School Dictionaries are also mentioned.

In Florida there is a State Adoption from August, 1911, to 1916, exclusive. Books adopted by the Florida Text Book Commission are: Webster's Primary Dictionary, Webster's Common School Dictionary, while Webster's New International Dictionary is recommended as the standard.

- 864 In Indiana, Webster's New International Dictionary, Webster's Collegiate, and Webster's Academic have been placed on the High School library list issued by the State Board of Education, January, 1911. Other dictionaries are mentioned.

In Iowa, Webster's New International Dictionary, Webster Collegiate, and Webster's Academic Dictionary are listed in the catalogue of Library books for School Districts of Iowa, recommended by the State Board of Educational Examiners issued by the Department of Public

Instruction, 1911. No other dictionaries mentioned. County adoptions, mostly of small dictionaries by County Board of Education. Webster in about fifty counties out of ninety-nine, A. B. Company.

In Kansas, in May and June, 1909, the Kansas Text-book Commission officially approved Webster's International Dictionary, Webster's Collegiate Dictionary, Webster's Academic, Webster's High School, Webster's Common School and Webster's Primary Dictionary for use in the Kansas Public Schools, exclusively. 866

In Kentucky, in the Library List issued by the State Superintendent of Public Instruction and the State Board of Education in the fall of 1909, are included Webster's New International Dictionary, and Webster's Collegiate Dictionary. No other dictionaries are mentioned.

In Louisiana, there is State adoption by the State Board of Education, 1909 to 1913, which includes Webster's Primary Dictionary, Webster's Common School, Webster's High School, and Webster's Academic Dictionary. Others are mentioned. 867

In Minnesota, Webster's International Dictionary, old edition, is supplied to the schools by the State Department of Public Instruction in accordance with legislative enactment.

In Mississippi there is State Adoption by the Text-book Commission of Mississippi of the Webster's Primary Dictionaries, five years, 1910 to 1915. Exclusive. 868

In Missouri, the State Library List of 1911, selected by the State Library Board, includes Webster's Academic Dictionary and Webster's New International Dictionary. No other dictionaries are listed. County adoption of text-books by County Text-book Commission for five years, 1908 to 1912, mostly. Webster in about sixty counties.

In Nevada there is State Adoption by the State Text-book Commission of Webster's Common School, Webster's High School and Webster's Academic, four years from September 1, 1911, exclusive.

870 In New Mexico there is territorial adoption by Territorial Board of Education June, 1911 to June, 1915. First eight grades, Webster's Primary Dictionary, Webster's Common School, Webster's High School, Webster's Academic, Webster's Collegiate and Webster's New International Dictionary. Exclusive.

In North Carolina there is State Adoption by the State Board of Education, July 1st, 1911 to 1916, of Webster's Primary Dictionary Webster's Common School, Webster's High School and Webster's Academic Dictionary. Exclusive.

871 In Oklahoma, In 1908, the State Text-book Commission of Oklahoma adopted for exclusive use in the schools of the state for five years, 1908 to 1913, Webster's International Dictionary, Webster's Primary, Webster's Common School, Webster's High School, and Webster's Academic Dictionary. In July, 1910, Mr. Jasper Sipes of Oklahoma City contracted with the State Text-book Commission for supplying the New International at \$10.80 per copy on the same terms and conditions as called for by the contract on the old International, August 1, 1908. We thus have
872 permission to sell the New International in lieu of the old where people of the state prefer to buy this book.

In South Carolina, the state list of library books, 1909 to 1914, adopted by the State Board of Education, gives Webster's Collegiate and Webster's International Dictionary. No other dictionaries are mentioned. State adoption, September, 1911 to June, 1917 (State Board of Education), Webster's Primary Dictionary, Web-

ster's Common School, Webster's High School and Webster's Academic Dictionary. Exclusive.

In South Dakota by legislative enactment it has become obligatory for each school and each school room, containing one or more of the grades three to eight inclusive, and each ungraded district school, to be supplied with a dictionary; said dictionary to be the one specifically approved by the County Superintendent. In thirty-nine out of the sixty-six counties, Webster's New International Dictionary has been thus approved, and in fifteen other counties this has been practically done. We know of no counties where any other dictionary has been approved. 874

In Tennessee, Webster's New International Dictionary is on the Tennessee State Library List for school libraries, issued by the State Board of Education. Other dictionaries are also mentioned. The list was received September 9th, 1911. 875.

In Utah, in pursuance of an act providing for the creation of a State Board of Education and providing for the adoption of a series of text-books for uniform use in the schools of Utah, except in cities of the first and second class, approved March 11, 1897, the State Text-book Convention duly called May 6, 1908, adopted among others the following text-books:

- Webster's International Dictionary
 - Webster's Collegiate Dictionary.
 - Webster's Academic Dictionary.
 - Webster's High School Dictionary.
 - Webster's Common School Dictionary.
 - Webster's Primary Dictionary.
- 876

No other dictionaries adopted. The cities referred to, of the first and second class, are also using our Dictionaries.

In Virginia the state list of books for school

libraries, issued by the Department of Public Instruction, 1911, includes Webster's Academic Dictionary, and no others. State text book adoption, State Board of Education, 1910 to 1914; High Schools, Webster's Academic and Webster's High School, exclusive. August, 1908 to 1912, for the Primary and Grammar Schools, Webster's Common School Dictionary, exclusive.

- 878 In Washington, three counties in the state have adopted Webster's School Dictionaries, but the A. B. Company are unable to give the names.

In Wisconsin, Webster's International Dictionary, old edition, is supplied to the schools by the state department of public instruction in accordance with legislative enactment. The International and the Academic are included in the list of books for free high school libraries, issued by the State Superintendent in 1909. No other English dictionaries are mentioned.

- 879 The following counties in West Virginia adopted Webster's Dictionaries in 1906:

A. B. Co.

Boone	Clay	Doddridge
Fayette	Hampshire	Hardy
Kenawha	Lincoln	Logan
Jefferson	Marion	Mason
Mercer	Mineral	Mingo.
Monroe	Morgan	Ohio
880 Pendleton	Pleasants	Pocahontas
Putnam	Raleigh	Randolph
Ritchie	Roane	Summers
Taylor	Tucker	Tyler
Upshur	Wayne	Wetzel
Wirt	Wood	Wyoming

The total number being thirty-six. The adoption expired this year when under the new law the State itself will adopt. (State School Book Commission). Exclusive adoption for five years, July 1, 1912 to 1917.

The following counties in Arkansas adopted Webster's Dictionaries (County School Board), six-year contracts:

In Madison, 1906, The Webster's Primary, Common School and High School; In Mississippi, 1908, the Common School and Academy. In Monroe, 1908, the Primary, Common School and Academy.

Q. 5. You have specified in various cases certain 882
dates at which you say complainant's books were adopted for school use. What was the fact and practice as to the use of the complainant's Webster Dictionaries in such schools prior to date of such contract? A. In substantially all of them, the books have been in use for many years previous to the adoption and in many of them it is simply a re-adoption of an old list.

Q. 6. Do you know of any schools in this country where any so-called Webster Dictionaries, 883.
published by persons other than complainant, have been sanctioned and adopted for school use? If so, please answer fully, stating where and to what extent. A. Some two or three years ago, the City of Chicago sanctioned the use of the so-called Laird & Lee dictionaries, but it was not an exclusive adoption, the genuine Webster Dictionaries being used alongside these, and still purchased by the Board and the pupils.

Q. 7. By "genuine" Webster Dictionaries you mean the Webster Dictionary published by the 884
complainant? A. Yes, or the American Book Company, who are publishing under an arrangement with G. & C. Merriam Company.

Q. 7. It is a fact, is it not, that the various school Webster Dictionaries of the complainant are handled and sold through the American Book Company? A. It is.

Q. 9. Please state the general nature of that

arrangement. A. Why we make all the books and plates from which the books are printed and they issue and sell the books under a royalty arrangement with us.

Q. 10. Who owns the copyrights of these books, so handled? A. G. & C. Merriam Company.

Q. 11. Who prepares and directs the preparation of the literary matter which is copyrighted in these books? A. G. & C. Merriam Company.

Q. 12. And the name G. & C. Merriam Company appears in the publisher's imprint along with that of the American Book Company, is that correct? A. It does.

Q. 13. Is there any other place than the schools of Chicago, that you know of, in which the so-called Webster Dictionaries of other publishers have been adopted or sanctioned for school use? A. There are a number of places in the middle West where these books have been used, but in every case where we have known of this being done the books have been discontinued for the genuine Webster.

Q. 14. About how many of such cases have you ever known of? A. Well, there have been a great many, fifty or sixty perhaps.

Q. 15. Who is the publisher of the dictionary entitled "Webster's Universal Dictionary"? A. It is sold by the Saalfield Publishing Company, as I understand it.

Q. 16. That is one of the dictionaries, originally published by one Ogilvie, is it not? A. It is.

Q. 17. That dictionary was involved in the litigation in the First Circuit at Boston and also litigation in the Sixth Circuit in Ohio? A. Yes, sir.

Q. 18. Have you recently seen advertisements of a thin paper edition of that book? A. I have.

Q. 19. Within what period have such advertise-

ments been published? A. Why, I should think within four or five months, perhaps less.

Q. 20. Has the book been actually issued in thin paper form? A. It has.

Q. 21. Have you seen a copy of it? A. I have.

Q. 22. This thin paper edition and the advertisements thereof have all been issued since the injunction in the First Circuit against Ogilvie? Is that correct? A. Yes.

890

Q. 23. Have you ever seen a copy of the thin paper edition or any advertisement thereof, which did not contain the words "This dictionary is not published by the original publishers of the Webster Dictionary or by their successors"? A. I have not.

Q. 24. Have you any reason to suppose, and if so, state it, whether or not persons have been deceived or misled by the advertisements of this thin paper edition into thinking it was a Webster Dictionary of the Merriam Company, notwithstanding the use of the words quoted?

891

MR. BEAN: I object, because the question refers to a dictionary not in issue in this case and it does not appear in what manner the words quoted have been employed either on the title page of the dictionary or the advertisements thereof, and because the answer of the witness, if it should state any cases of alleged or supposed deception, must necessarily be in the nature of hearsay testimony.

892

A. I have, from letters that we have received from various parties in the regular course of business.

Q. 25. How many such letters have you received and have you here present any?

MR. BEAN: Objected to for the same reason.

893

Kirk N. Washburn—Direct.

A. Why seventy-five, I should think.

Q. 26. Please produce and read into the record any letters which you have received in the regular course of mail, which consisted of orders or inquiries for this thin paper edition of the so-called Webster Universal Dictionary.

894

MR. BEAN: Objected to because the letters called for, as appears by the question, relate to the thin paper edition of a dictionary published by another party than the defendant in this action, and a dictionary in no way related to the dictionary at issue in this case.

895

MR. HALE: The letters referred to a dictionary published and sold as a Webster Dictionary and the letters when produced, it is claimed, will show deception and confusion in the public mind by reason of the use of the name Webster.

I will add to my question a request that you state relevant facts as to the relations between the writers of said letters and your company past or present.

A. The first letter is as follows:

CUNNINGHAM, CURTISS & WELCH,

SAN FRANCISCO, Jan. 11, 1912.

896

MESSRS. G. & C. MERRIAM Co.,
Springfield, Mass.

Gentlemen:

We have been informed that there has been published a new edition of the Webster's International, bound in Limp Leather and printed on thin paper. As yet, we have received no word from you in regard to it, and we will ask that

Kirk N. Washburn—Direct.

897

you kindly send us full information, and greatly oblige.

Very truly yours,

CUNNINGHAM, CURTISS & WELCH.

This firm has been closely associated with us in business for many years handling our books as customers.

898

ST. PAUL BOOK & STATIONERY Co.

January 16, 1912.

MR. H. W. BAKER,

Care of G. & C. Merriam Co.,

Springfield, Mass.

Dear Sir:

We understand that your company is advertising quite extensively the New International Dictionary in a thin paper edition. We can find no record of ever having received any circulars describing this book, if it is new. Please give us what information you can by return mail, and advise us whether this is sold through the trade.

899

Yours truly,

ST. PAUL BOOK & STATIONERY Co.

This concern has also been a customer of ours for many years.

900

SMITH & BUTTERFIELD Co.

EVANSVILLE, IND., 1/16/12.

G. & C. MERRIAM Co.,

Springfield, Mass.

Gentlemen:

Our attention has been called to an ad. in

901

Kirk N. Washburn—Direct.

Literary Digest of an India Paper Ed. of the International, pub. by Riverside Pub. Co., Chicago. Is this edition genuine? We have not seen the ad.

S. & B. Co.

This concern has also been a long time customer of ours.

902

I have here a letter from William H. Andre, Denver, Colo., under date of January 4th, 1912. In a paragraph at the close of this letter, which letter deals with other things, Mr. Andre, who is our agent in Denver says:

“What I am interested in now is the thin paper Dict. that you are advertising. If it will go only through the Subscription Dept., it will be Fine.”

903

GIMBEL BROTHERS.

PHILADELPHIA, Jan. 2, 1912.

G. & C. MERRIAM Co.,
Springfield, Mass.

Dear Sirs:

Kindly advise us when the Webster's New Univ. Dict. on thin paper will be ready for delivery, also bindings and prices—with discounts.

904

Yours truly,

JOS. SCAMMEL.

Mr. Scammel is the Manager of their book department, and Gimbel Brothers are customers of ours.

Kirk N. Washburn—Direct.

905

“JETT BOOK & STATIONERY Co.,

ST. LOUIS, Mo., Feb. 6, 1912.

THE G. & C. MERRIAM Co.,

Springfield, Mass.

Gentlemen:

We have received some inquiries relative to the new edition of the international dictionary, which you are advertising printed on India paper. We will appreciate it if you will send us full information relative to the same. 906

One question raised is whether this represents a new revision of the dictionary, or whether it is simply one that has been published for several years, now put forth on India Paper. We would also like to know if the dictionary comes in one volume form only, or in two volumes.

Please cover these points particularly, and send other information, including the price to dealers. 907

Very truly yours,

JETT BOOK & STATIONARY Co.”

These people are not customers of ours.

“JACQUIN & COMPANY

PEORIA, ILL., February 20, 1912.

G. & C. MERRIAM Co.,

Springfield, Mass.

908

Gentlemen:

One of our customers has just advised us that he has seen one of your large sized Dictionaries printed on India Paper. We told him the largest Dictionary that we knew of printed on India Paper was your Collegiate. He, however, stated that it was larger than this, hence we are writing you for this information.

909

Kirk N. Washburn—Direct.

Kindly let us know what you make in the line of India Paper Dictionaries and quote us prices on the same, and greatly oblige.

Very truly yours,

JACQUIN & COMPANY."

Jacquin & Company are customers of ours.

910

"BOGGS & BUHL

PITTSBURGH, PA., February 6, 1912.

Mess. G. & C. MERRIAM Co.,

Springfield, Mass.

Dear Sirs—

911 We have an inquiry for your Universal Webster on India Paper. Inasmuch as we know that this is a subscription edition, we should like to be able to impart all the necessary information to our patrons, and to that end would kindly ask you to forward us a prospectus, showing type, size of page, price, etc., when we will refer the order to your nearest agent.

Thanking you in advance for this, we are,

Yours very truly,

BOGGS & BUHL."

They are customers of ours.

912

"THE EDWARD P. JUDD COMPANY

NEW HAVEN. CONN., Feb. 20, 1912.

THE G. & C. MERRIAM Co.,

Springfield, Mass.

Gentlemen:

We have a customer who insists that she has seen an advertisement of a special edition of the New International Dictionary printed on India

Kirk N. Washburn—Direct.

913

paper, making a very thin and light volume like the cyclopedias lately issued in India paper. We have told her that we have never heard of the "International" being gotten up in such a form, but we agreed to verify our statement by appealing to you. She said the cost of the volume was about \$15.00.

We should be very glad to hear from you in regard to this.

914

Yours truly,

THE EDWARD P. JUDD CO.

Edward P. Judd Company are long time customers of ours.

"CHICAGO THEOLOGICAL SEMINARY

CHICAGO, 2-16-1912.

G. & C. MERRIAM & Co.,
Springfield, Mass.

915

Gentlemen:

I have seen in the Advance your adv. of the new Dictionary on India paper. You have given terms for time payment; will you be so good as to quote cash price on delivery for one or two copies, India paper edition? I am pleased to learn that the work is offered in a single thin volume. All my life it has been 'my food day and night.'

Very truly yours,

916

C. A. BECKWITH."

"THE BAKER UNDERWEAR COMPANY.

PEEKSKILL, N. Y., February 27, '12.

MERRIAM PUBLISHING COMPANY,
Springfield, Mass.

GENTLEMEN:

We have been informed that you are putting

917

Kirk N. Washburn—Direct.

out for subscription a Webster's Dictionary printed on India paper. If this is so will you please advise us how we can secure a copy, and at what price, and oblige,

Very truly yours,

THE BAKER UNDERWEAR CO."

918

"G. & C. MERRIAM Co.,

Springfield, Mass.

DEAR SIRs:

In reply to your letter of recent date, I am glad to tell you I have since I wrote you purchased a Collegiate International and think it just right for desk use. Although if when I got it I had known you had the India paper edition of the unabridged I rather think I should have chosen it. However, I dare say I shall get it yet at some

919 future date.

Respectfully yours,

FAYE E. PATTERSON,
R. F. D. 1 Shiloh,
Ohio."

"CHARLES F. FISCHER LUMBER CO.

NEW YORK, 11 March, 1912.

MESSRS. G. & C. MERRIAM COMPANY,

920

Springfield, Mass.

DEAR SIRs:

Am I rightly informed that you are about to issue the complete text of the large Webster on India paper? I should be glad to have you inform me of the price and the probable date of issue. I should find a complete Webster in this more portable form of great utility.

Truly yours,

Wm. King Fischer."

Kirk N. Washburn—Direct.

921

“THE UNIVERSITY CO-OPERATIVE SOCIETY.

AUSTIN, TEXAS, 2/17/12.

G. & C. MERRIAM,

DEAR SIRS:

Kindly send us by mail prices on the New International in the India Thin Paper edition.

Very truly yours,

922

THE UNIVERSITY CO-OPERATIVE SOCIETY.
Per Manager.”

“LESTER BOOK AND STATIONERY CO.

ATLANTA, GEORGIA, Jan. 11, 1912.

G. & C. MERRIAM Co.,

Springfield, Mass.

GENTLEMEN:

923

Please advise if you can furnish, if so, quote price on—

Webster's Universal Dictionary, India Paper edition, as per enclosed copy.

Yours truly,

By O. L. JERNIGAN.”

The “Enclosed copy” is a full page advertisement taken from a magazine for February, 1912, of a dictionary issued by and under the name of 924 the Riverside Publishing Company, Marquette Building, Chicago. This advertisement contains the following words, “This dictionary is not published by the original publishers of the Webster Dictionary or by their successors, but is an entirely new work.”

“D. A. CALLAHAN.

SALT LAKE CITY, UTAH, 1/4/12.

592

Kirk N. Washburn—Direct.

THE MERRIAM Co.,
Springfield, Mass.

GENTLEMEN:

We have had some calls for Webster Dictionary in India paper. Can you tell us the difference between your New Dict. and the Webster Universal Dict. as advertised in Lit. Digest so loudly. Is it
926 your book as inferred?

Yours,

D. A. CALLAHAN."

D. A. Callahan is a customer of ours.

"REV. E. C. SWITZER.

PHILIPPI, W. VA., Mch. 18, 1912.

G. & C. MERRIAM Co.,
927 Springfield, Mass.

DEAR SIRs:

As per my request I have received literature giving prices &c., of the International dictionary. I think I saw in the Literary Digest an ad. giving prices of a get up in "India" paper. In the description you send I find nothing of that kind. The ad. above referred to gave price \$14.00 and weight four pounds. What about it? I have the
928 first edition of Funk & Wagnalls Standard, two volumes in full morocco good condition. Would you take it in exchange? I am in close touch with two church schools in this state; what could you give especially with a view to working them in these schools?

Very truly yours,

E. C. SWITZER."

In a letter from The Martin & Hoyt Co., At-

Kirk N. Washburn—Cross.

929

lanta, Ga., dated January 5, 1912, in the last paragraph they say:

“We have also received a communication from one of our subscribers stating that he had been informed that Webster’s New International Dictionary was published in India paper. We have written him that this is not the case, unless he refers to the collegiate edition.”

930

“HUDSON RIVER STATE HOSPITAL

POUGHKEEPSIE, N. Y., Jan. 2, 1912.

Gentlemen:

I should like to know if the attached advertisement refers to the latest edition of Webster’s or if it is merely a reprint from old plates.

Very truly yours,

CHAS. W. PILGRIM.” 931

The “attached” refers to a clipping from an advertisement of the Webster’s Universal Dictionary, thin paper edition, which gives the name of the Riverside Publishing Company, Marquette Building, Chicago, as the publishers.

Q. 27. Are the letters which you have written into the record fair specimens of other communications to which you have referred bearing on this subject? A. They are.

Q. 28. Did the complainant or any one on its behalf have any prior communication with the writers of any of these letters with reference to the subject matter thereof? A. They did not. 932

Q. 29. These letters then were merely letters received in the ordinary course of mail and the ordinary course of business? A. They were.

CROSS-EXAMINATION by Mr. Bean:

x Q. 1. So far as you could observe, Mr. Wash-

burn, from the letters which you have read into the record, have the writers of any of them had their attention called to the dictionary published by the Syndicate Publishing Company which is in issue in this case? A. I am not aware that they had.

x Q. 2. In most cases the letters designated refer, do they not, to a dictionary published by another publisher or other publishers than the Syndicate Publishing Company or the Cupples & Lean Company? A. They refer to the dictionary published by the G. & C. Merriam Company and the letters themselves do not refer to any other publishers.

x Q. 3. Do they not in most cases refer to a thin paper edition published by the Riverside Publishing Company, or bearing such imprint? A. They refer sometimes to our dictionary specifically as "Webster's International" or "Webster's New International" or to a dictionary by another name which the writers seem to think are published or may be published by G. & C. Merriam Company.

x Q. 4. And in most cases they refer, do they not, to a thin paper edition? A. They do.

x Q. 5. And the only thin paper edition of an unabridged dictionary, bearing the name "Webster" which has been published, so far as you know, is the thin paper edition published by or bearing the imprint of the Riverside Publishing Company, is it not? A. Yes.

x Q. 6. It is your opinion, is it not, that such confusion, if any, as indicated by these letters, has risen from the fact that the name "Webster" was in the title of a dictionary not published by you? A. Yes.

x Q. 7. Did you see in the "Literary Digest" an advertisement of a thin paper edition describing it as published by the Riverside Publishing Company? A. I think so.

x Q. 8. So far as you know then, there has been no advertisement of a thin paper edition in the "Literary Digest" which has not specifically stated that it is published in Chicago by the Riverside Publishing Company? A. No, sir.

x Q. 9. You have said that some of the writers of these letters are customers of yours. Do you know whether or not some, or all of them, do not carry Webster Dictionaries published by other publishers than yourselves? A. I do not know. 938

x Q. 10. One of the writers, I believe Faye Patterson, said that she had purchased recently from you a "Collegiate International." That would be an impossibility would it not? There is no dictionary, so far as you know, called the "Collegiate International"? A. No, sir. Our Collegiate dictionary, however, is abridged from the International and so states on the title page.

x Q. 11. But not in the title of the dictionary? 939.
A. No.

x Q. 12. Has it not been your experience that the public generally are apt to be careless or unobservant as to the exact title even of your own dictionary? A. I think the public generally on seeing the name "Webster" attached to a dictionary think it is one of our books. They are not always, although I think generally, specific in the name when they communicate with us.

x Q. 13. In your answers to some direct questions as to the adoption of your dictionary you speak of instances where there have been adoption of other dictionaries together with the adoption of the "genuine" Webster Dictionaries. By "genuine" you mean Merriam's Webster Dictionary? A. I do. 940

x Q. 14. That is to say, your test of the genuineness of the Webster Dictionary is whether it is published by the Merriam Company. A. Wheth-

941

Kirk N. Washburn—Re-direct.

er it is published directly by us or under an arrangement with us, yes.

x Q. 15. That is to say, to be a genuine Webster Dictionary it must be published by the Merriam Company or the American Book Company. A. Up to this date, yes.

942

x Q. 16. "Genuineness" then to your mind has no reference to the question whether it is in fact a revision of the work of Noah Webster or of an earlier edition of your dictionary in which the copyright has expired? A. The "genuine" Webster dictionary is in my mind one of the recent dictionaries published in the regular succession by G. & C. Merriam Company.

943

x Q. 17. If a dictionary is in fact a revision or abridgement of the 1847 edition of Webster Dictionary, for instance, and is a recent revision, it is not genuine if not published by the Merriam Company? A. No.

RE-DIRECT:

Q. 1 (By Mr. Hale): I show you seven sheets consisting of the first page of the following publications respectively:

944

- "The Tidings."
- "The Sycamore Sentinel."
- "The Elliott Messenger."
- "The Pastor's Call."
- "The Church Invitation."
- "Our Master."
- "St. John's Message."

Each of which pages contain an advertisement of "Webster's New Illustrated Dictionary" and edited by the New York Church Publishing Company of 225 West 39th Street, New York City, and ask you if you cut these advertisements from the publications named, and if so, please state the date of

Kirk N. Washburn—Re-direct.

945

the publication. A. I did cut them from the publications in question, and it was the March issue of said publications.

The advertisements identified by the witness are marked for identification respectively "Washburn's Exhibit One for Identification" and so on up to "Seven for Identification."

Deposition by Mr. Washburn closed.

946

(Signature Waived.)

(Notice of taking deposition, and Special Examiner's certificate, not printed, by consent.)

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DISTRICT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

	G. & C. MERRIAM COMPANY, Complainant,	}	Equity 8-161.
950	VS.		
	COUPLES & LEON COMPANY, Defendant.	}	Equity 8-162.
	G. & C. MERRIAM COMPANY, Complainant,		
	VS.	}	Equity 8-162.
951	SYNDICATE PUBLISHING COMPANY, Defendant.		

NEW YORK, February 14th, 1912.

Testimony taken on behalf of the complainant, for final hearing, pursuant to notice annexed, before JOHN A. SHIELDS, Esq., a Standing Examiner of this Court, pursuant to the 67th Rule in Equity, as amended, at the offices of Messrs. Judson & Hale, 40 Wall Street, Borough Manhattan, New York, at 2 p. m.

APPEARANCES:

The Examiner.
WILLIAM B. HALE, Esq.,
For Complainant.

John L. Gifford—Direct.

953

GEORGE F. BEAN, Esq.,

Of Counsel for Defendant, Syndicate Publishing Co.

LAUREN CARROLL, Esq.,

Of Counsel for Defendant, Cupples & Leon Company.

JOHN L. GIFFORD, a witness called on behalf of 954
the complainant, having been first duly cautioned
and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Mr. Gifford, you reside in Newark, N. J.?

A. I do.

Q. 2. What is your occupation? A. My occupation is general State agent, State of New Jersey for G. & C. Merriam Company.

Q. How long have you been connected with the Merriam Company in a business way? A. 955
A little over two years.

Q. 4. And before that time what was your occupation? A. I was selling agent for Funk & Wagnalls, publishers of the Standard Dictionary, New York City.

Q. 5. How long approximately? A. As near as I can recall about seven years.

Q. 6. Are you familiar with the book known as Webster's Dictionary? A. I consider myself fairly familiar with this book. 956.

Q. 7. For how long have you been more or less familiar with this book? A. As an agent for a little over two years; I have known the book in a personal way for thirty years.

Q. 8. And you have known it as a competitor of Funk & Wagnalls' Standard Dictionary for seven years, is that correct? A. That is correct.

Q. 9. During all this period, who has been the publisher of the Webster's dictionary to which

you have reference? A. From the beginning, of thirty years, I have known it as published by G. & C. Merriam Company.

Q. 10. Has your business brought you in direct contact with the purchasers and users of dictionaries? A. It most decidedly has.

Q. 11. From your experience as a salesman first of the Funk & Wagnal's Standard Dictionary and later as a representative selling Webster's Dictionary are you able to say what book is meant by the term "Webster's Dictionary," when used by the average purchaser or member of the public; if so, please state the matter fully?

A. My experience as both agent in selling the Webster's Dictionary and as the competitor in selling the Funk & Wagnalls' Standard Dictionary, I have been led to believe that the general public has believed the Webster's Dictionary placed above whatever following title have understood that the Webster's Dictionary meant the genuine and original dictionary, such as has been used by the Public Schools and professional and literary people, whether they knew the publishers, G. & C. Merriam Company or not. My recent experience during the last two years as the general agent for G. & C. Merriam has made this opinion more sharp than previous. I have come in contact with many specific cases where the purchasers of dictionaries under the title of "Webster's" followed by numerous descriptive titles have declared to me that they were purchasing the authentic dictionary as used in Public Schools.

Q. 12. Can you state some specific instances which have come to your attention in which the purchaser of a dictionary bearing the name "Webster's" in the title purchased the same thinking he was obtaining a copy of the genuine Webster's Dictionary as published by G. & C.

Merriam Company. If so, please state such instances in detail. A. I know of a case of Principal of Private School in Newark, New Jersey who had purchased a Webster's dictionary. I called upon this principal for the purpose of selling her Webster's dictionary published by G. & C. Merriam Company and the principal pointed to the Webster's which she had bought a short time before with considerable pride—saying that she had the Webster's dictionary already. I asked her to examine the title and the publishers and when she found that it was not the dictionary that was in general use by schools, she expressed her dissatisfaction, she said, "She supposed she had bought the genuine dictionary as used by schools and colleges." 962

Q. 13. What was the title and publisher of the book which she had bought under the impression above stated? A. The title of this book was either "Webster's Universal Dictionary" or "Webster's Imperial Dictionary." Published by one Saalfeld. 963.

MR. BEAN: The answer is objected to as irrelevant and immaterial.

MR. CARROLL: I object to all the testimony given relative to the conversation with the principal of the school as incompetent, irrelevant and immaterial.

Q. 14. Do you recall the name of this teacher? A. I do not. 964

Q. 15. When did this transaction occur? A. About a year and a half ago.

Q. 16. Can you state any other similar experiences that you have had? A. I recall a case of a minister in Drew Theological Seminary Madison, New Jersey, who bought a Webster's dictionary—

965

John L. Gifford—Direct.

MR. CARROLL: I object generally to any testimony here about any alleged confusion being caused by the sale of any other dictionary than that published by either of the defendants.

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MR. HALE: The testimony is offered for the purpose of showing the meaning of the name "Webster" and its identification with the books of the complainant.

MR. CARROLL: I object further on the ground that it is hearsay.

A. (continued) who said he supposed he was getting the genuine Webster's.

Q. 17. Did you see the book which he had bought? A. I did.

Q. 18. What book was it? A. Webster's Universal Dictionary.

967 Q. 19. Published by Saalfeld? A. Yes.

(Same objection.)

Q. 20. And he told you this in response to your efforts to sell him a Webster's Dictionary published by the complainant, is that correct? A. That is correct.

Q. 21. How frequent have been your experiences of this kind while endeavoring to sell the Merriam Co.'s Webster's Dictionary?

968

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, unless connected with either of the books of the defendants.

A. My experience of this kind has been daily.

Q. 22. Have you met with any instances in which the person canvassed by you had purchased the book entitled "Webster's New Standard Dictionary"? A. I do not recall any case of this kind.

Q. 23. In these instances which you have mentioned where persons canvassed told you that they had already purchased a genuine Webster's Dictionary, what, if anything, do they point to about their book in substantiation of their statement? A. Generally, that they do not think the book is the authority——

(Question 23 withdrawn.)

970

Q. 24. You have testified substantially that you have met persons in the course of your canvasses who were deceived into purchasing dictionaries of other publishers in the belief that they were obtaining one of the dictionaries published by the Merriam Company. What caused that deception as stated to you by these persons?

MR. BEAN: That question is objected to as an incorrect statement and summary of the testimony of the witness, and also as 971 calling for hearsay evidence.

MR. CARROLL: I make the same objection.

A. Because of the fact that the dictionary was not the Webster's dictionary used by the Public Schools, generally.

Q. 25. What was there about the book that made them think it was the book used by the schools generally? A. Because it was called 972 "Webster's Dictionary."

Q. 26. And they have stated this fact to you? A. Yes.

DIRECT EXAMINATION CLOSED.

CROSS-EXAMINATION by Mr. Bean:

x.Q. 27. I understand then, from your last answer that the test of genuineness of a Webster

Dictionary rests in the fact whether it is generally used in the Public Schools? Is that correct? A. Yes, in the minds of those purchasers.

x Q. 28. You say you have been familiar with Webster's Dictionary one way or another for thirty years; during that period have you not known of various Websters' Dictionaries published by different publishers? A. I have not.

974 x Q. 29. Would it surprise you to know that within the last twenty years or thereabouts there have been Webster's dictionaries published by twenty-five or more publishers other than the Merriam Company?

MR. HALE: Objected to as immaterial, and as assuming facts not in any way proved in the evidence.

A. I would not be surprised at such a statement.

975 x Q. 30. Would you be surprised to learn that such was the fact? A. Judging from the numerous sub-titles of Webster's appearing in recent years, I would not be surprised if such were the fact.

x Q. 31. What do you mean by "sub-title" in that connection? A. Such words as "Imperial," "Universal," "Standard," appearing under the name of "Webster."

x Q. 32. When you say "under," you mean
976 "along with it," I suppose. A. I mean "below."

x Q. 33. Do you know whether a Webster's Dictionary issued by any other publisher than the Merriam Company is in use in the public schools in any part of the United States? A. I do. I know of a small dictionary that is in use in some of the schools; very few schools, however, and those located in small towns or country places; the title of the book I cannot recall.

x Q. 34. Have you known that the Webster's

Universal Dictionary or Webster's Imperial Dictionary to which you have referred in your testimony is in use in the Public Schools in Philadelphia? A. I do not know.

x Q. 35. You have referred to two specific instances where in trying to sell a dictionary of the Merriam Company you have found the party solicited to be the owner of another Webster's Dictionary than those published by your employer; 978 have you not in those instances as well as in others informed such parties that they had not a genuine Webster's Dictionary but that yours was the only genuine Webster's Dictionary? A. I made one instance where the school principal had purchased the dictionary, and another instance where the minister at the seminary had purchased a dictionary and in both cases for their individual use and I informed them that our book as published by the Merriam Company is generally regarded as highest authority. 979

x Q. 36. Isn't it your business to talk up your dictionaries and to talk down the other fellow's? A. It is my business to talk our own dictionary. I never talk of a competitor's unless the purchaser wishes comparison.

x Q. 37. You were asked what you meant by the term "Webster's Dictionary" and you said, if I have you correctly, that you mean the genuine and original dictionary used by the public schools, professional and literary people. What was, if you know, the genuine and original dictionary, bearing the name "Webster"? A. When I speak of the genuine Webster's dictionary I refer to the Webster's Dictionary as published by the G. & C. Merriam Company during the period of about sixty-eight years. 980

x Q. 38. Then if I understand you correctly it is your opinion, that a Webster's Dictionary to be genuine must be published by them? A. I regard

981

John L. Gifford—Cross.

this as true as held in the mind of the general public——

MR. BEAN: I object to that answer as not responsive, and I repeat the question.

x Q. 38. (Repeated).

A. I regard it genuine and authentic if published by G. & C. Merriam Company; if published otherwise, I regard it not genuine.

982

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 39. Then you would not consider a re-print of the 1847 Webster's Dictionary published for example by Funk & Wagnall to be a genuine Webster's Dictionary? A. I would consider if it was an exact re-print. I would consider it historical genuine; but not a modern genuine Webster's Dictionary.

983

x Q. 40. Nevertheless it is genuine?

MR. HALE: Objected to calling for the witness's opinion on one of the issues in the case, and as to which he is not qualified as an expert.

A. I regard it not genuine.

x Q. 41. In the beginning of Mr. Hale's questions he asked you if you were familiar with "Webster's Dictionary"; what book did you think he meant? A. Webster's New International Dictionary.

984

x Q. 42. So that each one of the answers which follows those questions apply only to Webster's International Dictionary? A. Yes, as I am familiar with Webster's Dictionary.

x Q. 43. Are there other Webster's dictionaries published by G. & C. Merriam Company? A. Other than the Webster's New International do you mean?

x Q. 44. Yes. A. Yes.

x Q. 45. Which of the G. & C. Merriam Webster's Dictionaries do you sell? A. I did, Webster's New International Dictionary.

x Q. 46. Did you ever sell Webster's Condensed Dictionary? A. No.

x Q. 47. When did you first hear of the G. & C. Merriam Company? A. About thirty years ago.

986

By Mr. Bean:

x Q. 48. You stated in answer to Mr. Carroll's question that you would not consider a reprint of an old Webster's Dictionary of the Merriam Company if reprinted by another publisher to be the Merriam Company's Webster's Condensed a "Modern genuine Webster." Do you consider the Dictionary first copyrighted by them in 1884 a modern genuine Webster? A. I think that should be modified, if the book has more recent copyrights; I consider it modern and genuine.

987

x Q. 49. If the contents of that dictionary are substantially the same as they were in 1884 and if the illustrations in it are the same as they were in 1884, would you consider that that it was a modern genuine Webster because subsequent copyright notices appear on the back of the title page?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, because based on facts incorrectly stated and of which no evidence has been offered and because the authenticity of the book referred to is not in issue.

988

MR. BEAN: The question is asked because the witness has testified as to what in his opinion constitutes a genuine Webster Dictionary, and it is desired to exhaust his opinion upon that subject and to ascertain the basis thereof.

MR. HALE: The question is further objected to as not proper cross examination, as the witness was not asked in chief his opinion as to what constituted a genuine Webster's dictionary.

A. I would consider it a modern genuine dictionary because of the copyrights appearing 990 after the first copyright.

RE-DIRECT EXAMINATION BY MR. HALE:

Re-D. Q. 50. Is the Funk & Wagnall's Standard Dictionary the book known in the market, called for and sold by the name of "Webster's Dictionary"?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

991 A. The book published by Funk & Wagnall called the Standard Dictionary is not known as Webster's Dictionary in the market to my knowledge.

Re-D. Q. 51. Would the Standard Dictionary of Funk & Wagnalls be any more a Webster's Dictionary than it is now, if the cover and title page were ripped off and the name "Webster's Dictionary" substituted?

992 MR. BEAN: I object to the question because the witness has not qualified as an expert to answer; also as irrelevant and immaterial.

MR. HALE: I mean as the ordinary buyer understands the term "Webster's Dictionary"?

MR. BEAN: Same objection.

A. The changing of the binding and title of the Standard Dictionary published by Funk &

Frederick W. Seybel—Direct.

993

Wagnalls would not make it a Webster's Dictionary.

DEPOSITION CLOSED.

John L. Gifford.

Subscribed to and sworn to before }
me this 14th. day of February, 1912. }

John A. Shields,
Standing Examiner.

994

FREDERICK W. SEYBEL, a witness called on behalf of the complainant, testifies as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Mr. Seybel, you reside in the City of New York? A. Yes, sir.

Q. 2. You are the president of the F. W. Seybel Company, manufacturers and importers of ladies' hats? A. Yes. 995

Q. 3. Are you at all acquainted with the work known as "Webster's Dictionary"? A. Yes.

Q. 4. Approximately how long have you known of it? A. Well, since my boyhood.

Q. 5. You are the Mr. Seybel who has already made an affidavit for us in this case, are you not? A. Yes, sir.

Q. 6. Are you acquainted with the standing or reputation of Webster's Dictionary as an authoritative work? A. Well, just as I have been accustomed to use it; I have it in my library. I use it for reference. 996

Q. 8. Did that work have a favorable or an unfavorable reputation and standing in your mind? A. Favorable, as I considered it the leading dictionary.

Q. 9. Prior to making the affidavit in this case, did you know the name of the publisher of this dictionary which you regard as a leading authority? A. No. I only know it in a casual way as most men probably would know it, Merriam & Company, publishers of a dictionary compiled by Dr. Noah L. Webster.

998 Q. 10. Early in the year 1911 did you have occasion to purchase a small dictionary entitled "Webster's New Standard Dictionary"? A. Yes.

Q. 11. I show you a book marked "Complainant's Exhibit, Seybel's Dictionary," which was filed with your affidavit in this cause, and ask you if that is the book you purchased at that time? A. This is the book that I purchased, because I wrote my name in it at that time.

999 Q. 12. Please state fully the circumstances under which you obtained this book, including the influences that operated upon your mind and a statement of what you expected and intended to get. A. My office dictionary had become worn out and I happened to be in the office of my superintendent, Mr. Hughes, when he said, "I have got a big bargain in Webster's Dictionary. I asked him, "Is it a genuine Webster?" He said, "Yes." I asked him where he got it, and he replied that he got one from the New York American by the payment of a small sum of money, I forget how much it was, and a number of coupons. He purchased it
1000 for me, sent it to my office, and the first intimation that I had that it was not genuine was when Mr. Hale picked it up and said to me, "You have not a genuine Webster's Dictionary." He asked me if I purchased it for a genuine "Webster" and I told him that I most certainly did. He said, "Would you be willing to make an affidavit to that effect?" and I said, "I certainly would," as I did not care to have forced upon me something that was not as

Frederick W. Seybel—Direct.

1001

it was represented. Mr. Hale asked me if he might have this copy. I said he could and he sent me a genuine Webster to take its place.

Q. 13. Of your own knowledge and except as you have confidence in Mr. Hale's statement, do you know whether the book you have identified and which you purchased from the New York American is or is not a genuine Webster's Dictionary?

A. I have not made any comparison.

1002

Q. 14. And you don't know A. I do not know at this moment.

Q. 15. What, if any, effect did the favorable reputation of Webster's dictionary have upon your mind in making the purchase of this particular book? A. I did not know what this was, nor did I have the time or opportunity to examine it very critically. I would not have been interested had I not believed that I was purchasing the genuine dictionary, Webster's dictionary.

1003

Q. 16. Will you explain what you mean by a "genuine Webster's Dictionary" in your last answer? A. A dictionary published by the Merriam Company, known as Webster's Dictionary.

Q. 17. Until so informed by Mr. Hale at the time he obtained your affidavit, did you know that there was more than one publisher publishing dictionaries described as Webster's dictionaries? A. No, sir.

Q. 18. What did you believe as to the source of all dictionaries denominated "Webster's"; I mean commercial source? A. I believed that there was only one Webster's dictionary, published by Merriam Company; I mean by one, that there were probably a number of editions; I believed that I was getting an abridged copy; I did not expect for such a small sum to get the Webster's unabridged.

1004

Q. 19. Of what book did you suppose this was an abridgement? A. The large Webster Unabridged edition.

1005

Frederick W. Seybel—Cross.

Q. 20. There have been editions of the large unabridged Webster's Dictionary in the following years: 1828, 1840, 1847, 1864, 1890, 1909; which one of these editions did you think you were getting an abridgment of? A. I have the 1890 in my library.

Q. 21. Do I understand you to mean that you thought you were obtaining from the New York
1006 American an abridgement of the 1890 edition of Webster's Dictionary, such as you have in your library, is that what you mean? A. I presumed that I was purchasing an abridged copy of a genuine Webster's Dictionary.

Q. 22. Of a current or of an obsolete edition?
A. Of a current edition.

CROSS-EXAMINATION by Mr. Bean:

x Q. 23. Do you know anything about the copy-
1007 right law Mr. Seybel? A. In a very indifferent way; as a business man might know.

x Q. 24. When you purchased this dictionary you knew Merriam & Company was a publisher of dictionaries? A. I did.

x Q. 25. Do you know how long they and their predecessors had published Webster's Dictionary? A. Well, I knew it had been a great many years.

x Q. 26. Did you know whether any of their
1008 copyrights had expired? A. No, sir.

x Q. 27. Did you look in this book to see who was the publisher? A. No, not at the time I first received it.

x Q. 28. Did you then look on the back of the title page to see who copyrighted it? A. No, sir, did not pay any attention to it.

x Q. 29. You were entirely satisfied with it, were you not, until you talked with Mr. Hale? A. I hadn't examined it up to that time.

x Q. 30. How long was that? A. Possibly a week.

x Q. 31. And he told you it was not a genuine Webster? A. He did.

x Q. 32. And that was all you knew about whether it was genuine or not; what he told you? A. Yes, sir.

x Q. 33. Where did he see this dictionary, in your office? A. In my office.

1010

x Q. 34. Do you know how he happened to be there? A. Mr. Hale is my counsel and he is also interested with me in the Uniform Fibrous Tale Company. He is one of the Board of Directors.

x Q. 35. I note that in your affidavit, Mr. Seybel, you say that you believed you were getting an abridgement of a current edition of Webster's Unabridged Dictionary. Do you know whether there is such an abridgement in existence published by anybody? A. I believed that I was getting a genuine dictionary, and not one of the great thick dictionaries.

1011

x Q. 36. You think what you did get is not genuine because Mr. Hale tells you? A. Absolutely.

x Q. 37. You perhaps know that Noah Webster died many years ago? A. Yes.

x Q. 38. Would an abridgement of an unabridged dictionary published by the Merriam Company upon which unabridged dictionary the copyright had expired, not be a genuine Webster's Dictionary in your opinion, if published by some other house than the Merriam Company?

1012.

A. I wouldn't have the same faith in it.

x Q. 39. But would you say that such a dictionary was not a genuine Webster Dictionary, even though you thought it not so good a one?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling

1013

Frederick W. Seybel—Cross.

for the opinion of the witness upon what constitutes a genuine Webster's dictionary which is the question for the Court and as to which this witness has not been qualified as an expert.

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MR. BEAN: The question is insisted upon because the witness's opinion based upon his own knowledge is desired as well as the opinion based on the statement of Mr. Hale, and further because the witness has repeatedly on his direct examination used the phrase "genuine Webster's dictionary" and it is desired to know what he means by it.

1015

MR. HALE: The witness has disclaimed any knowledge and has made no statement as to whether or not the book he bought is or is not a genuine Webster's dictionary. The matter being left for determination by the Court.

A. I would consider the only genuine Webster a publication by the publishers who were so long known as the publishers of the Webster Dictionary as the only genuine Webster's Dictionary whether the copyright had expired or not.

1016

xQ. 40. If you had read the title page of the dictionary referred to at the same time when you wrote your name on the opposite leaf, would you have been deceived in your opinion in purchasing it?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for the opinion of the witness upon a state of facts which did not exist and because the name was written in the dictionary after the purchase had been completed.

A. Had I noticed this, I would have rejected it.

Had I noticed at the bottom of the title page—"New York, Syndicate Publishing Company, 1911" I would have rejected it. I would not have been deceived if I had seen this.

By Mr. Carroll:

x Q. 41. If you were shown an 1847 edition unabridged published by the G. & C. Merriam Company, would you consider that a genuine Webster's dictionary? A. If on its title page was printed "published by the Merriam Company, of Springfield, Mass.", I would accept it as a genuine Webster. 1018

x Q. 42. If you were offered an exact re-print of that dictionary published by another house, would you still consider that as a genuine Webster? A. I would consider it a fraud.

x Q. 43. Don't you know that the copyright on that edition had expired and that it is anyone's right to re-publish it? 1019

MR. HALE: Objected to as calling for the witness's opinion on a question of law and because the question for the witness is not one of right, but of identity of different books.

MR. CARROLL: I insist upon the answer to the question because this witness has already testified on his direct examination to a number of questions pre-supposing a knowledge of the law. 1020

A. Yes.

MR. HALE: Objected to further, as argumentative.

x Q. 44. Are you more interested in buying a dictionary, or, more particularly, in buying an edition of a Webster's dictionary, in the pub-

1021

Frederick W. Seybel—Re-direct.

lisher or in the editor? A. I am interested in buying a dictionary more according to its reputation.

x Q. 45. Do you mean its reputation for the correctness of its contents or for the accuracy of its type and the elaborateness of its binding? A. For the correctness of its contents.

1022 x Q. 46. Then you are more interested in the editor than in the publisher? A. I don't give a darn about either one of them.

x Q. 47. What is there about the name "Webster's Dictionary" that attracts you? A. Its name and its reputation.

x Q. 48. Its reputation for what? A. Its reputation for being probably the best English dictionary extant.

1023 x Q. 49. Why do you consider it so? A. For the reason that it is to be found in the best places of learning in English speaking countries.

x Q. 50. And when we have been using the term "Webster's Dictionary" what edition of it have you meant? A. All editions in their time.

RE-DIRECT EXAMINATION BY MR. HALE:

1024 Re-D. Q. 51. If you went into a book store to-day and asked for a copy of Webster's Unabridged Dictionary for present day use, and you were given an exact reprint of the 1847 edition, would you have obtained the specific book which you had in mind to buy? A. No, sir; I would have asked for the latest edition.

Re-D. Q. 52. Since making your affidavit for use on the preliminary motion have you been approached by representative of either defendants? A. Yes.

Re-D. Q. 53. How many times? A. Three or four times.

Re-D. Q. 54. What was the name of the gentle-

man or gentlemen that called upon you in the defendants' interests? A. Mr. George W. Ogilvie, and also by another gentleman whose name I cannot remember.

Re-D. Q. 55. Was it Mr. Rankin? A. Yes, it was Mr. Rankin who called twice with Mr. Ogilvie.

RE-CROSS EXAMINATION by Mr. Bean:

Re-x. Q. 56. I understand you were given a dictionary in place of this one by Mr. Hale? A. Yes. 1026

Re-x. Q. 57. What was the title of it? A. Webster's Collegiate Dictionary.

DEPOSITION CLOSED.

(By consent oath
and signature waived.)

MR. HALE: The Webster's New Standard Dictionary purchased by the witness and identified by him in the foregoing deposition is offered in evidence and marked "Complainant's Exhibit, Seybel's Dictionary, JAS. EXR., February 14th, 1912." 1027

IT IS STIPULATED that all exhibits offered in evidence by the respective parties shall remain in the possession of the party offering the same until the final hearing, but subject at all reasonable times to the inspection by counsel for the opposite party. 1028

ADJOURNED to to-morrow, February 15th, 1912,
at 10 o'clock in the forenoon.

1029

Walter M. Buddecke—Direct.

New York, February 15th, 1912.

10 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

1030

WALTER M. BUDDECKE, a witness called on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Mr. Buddecke, you reside in the City of New York, at No. 7 West 16th Street? A. Yes.

Q. 2. And you are the local manager in the City of New York for G. & C. Merriam Company, the complainant in this case, for the sale of their Webster Dictionary? A. Yes.

1031

Q. 3. How long have you been engaged in that capacity? A. About six years.

Q. 4. Have you in the course of your employment personally sold Webster Dictionaries for the Merriam Company and canvassed persons for the sale of those dictionaries? A. Yes.

Q. 5. From your experience in the dictionary business, do you know what book is understood and intended by the ordinary purchasers and users of dictionaries by the term "Webster's Dictionary?"

1032

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, as hearsay and as calling for a conclusion of the witness.

A. Yes.

Q. What book do they mean?

MR. CARROLL: Same objection.

A. Those published by G. & C. Merriam Company.

Q. 7. Published by the Merriam Company under what name? A. The Unabridged, the International and the New International.

Q. 8. By what name do the general public refer to the three editions mentioned by you? A. Webster.

Q. 9. Upon what do you base your statement that the ordinary purchaser by the term "Webster's Dictionary" means one of these dictionaries published by the Merriam Company? A. By what people have told me when trying to sell the book. 1034

Q. 10. In recent years other publishers have to a greater or less extent used the name "Webster" in the title of dictionaries not published by the Merriam Company; state if you can how this has affected your business and the sales of the Webster's Dictionary published by the Merriam Company? A. When I first was employed by the firm the Ogilvie book did us a great deal of damage, by preventing us from selling the book. Then the Saalfield book hurt us a great deal too; more recently up to within a month I should say the Syndicate Company's books have reduced our sales fully fifty per cent., if not more. 1035

Q. 11. You know, do you not, that the Saalfield book is the same as the Ogilvie book, Saalfield having succeeded to Ogilvie's business? A. I have been told so.

Q. 12. Please explain how it is that the sales of these other books have decreased the sale of the Merriam book, as stated by you? A. The name "Webster" has been the principal and only reason that people have bought other books thinking that they were getting the genuine Webster, not knowing who the publisher really was. 1036

Q. 13. How do you know that? A. From what they told me in conversation.

1037

Walter M. Buddecke—Direct.

Q. 14. While you were trying to sell them the Merriam Company's book? A. Yes.

Q. 15. Please state what these people have told you from time to time in the course of your canvasses and what you have referred to in your previous answers?

1038

MR. CARROLL: Objected to as irrelevant, incompetent and immaterial; hearsay, and calling for a conclusion of the witness.

1039

A. They have always told me they knew the Webster Dictionary and were astonished to learn that more than one firm was publishing a book under that name. These people in some instances could be convinced that the original publishers of the Webster Dictionary was G. & C. Merriam Company, Springfield, Mass. In other cases, they seemed to think that I, like other salesmen, was simply trying to induce them to buy our book and prejudice them against that of a competitor.

MR. CARROLL: I move that the last part of that answer beginning with 'they could be convinced' be stricken out as not responsive.

Q. 16. Where you say "they seemed to think," do you mean they stated that fact to you? A. Yes.

1040

Q. 17. Based on what these people have said to you, what book do they think they have obtained when they have one of these dictionaries bearing the name "Webster" in the title?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

A. They state they have bought the book known as the authority and called "Webster's."

Q. 18. How frequent have such instances been in your experience in the sale of the Merriam Company's books? A. Very often.

Q. 19. Can you recall any specific instances that you have in mind of this sort of thing? A. Yes. A man by the name of Weber wanted to buy our book and refused to do so because of the difference in price. He had seen the book and this book had been bought for \$16.00. The sixteen dollar book proved to be the book published by Saalfield. Rather than lose the sale I sold him our book at \$16. and sacrificed my commission, a thing I have never done before. 1042

Q. 20. What book did he say he had bought when he bought the Saalfield dictionary? A. The genuine Webster.

Q. 21. Did he say anything else as to what book it was? A. No.

Q. 21. Did he indicate in any way his idea of what was a genuine Webster's dictionary? A. Yes. That is a question I have asked myself a number of times. And the name "Webster" was the only conclusive evidence they had of owning a genuine Webster. 1043

Q. 22. How often have these people canvassed by you told you that they had a genuine Webster's dictionary when in point of fact they had some dictionary, other than one of the Merriam Dictionaries, but bearing the name "Webster" in the title? 1044

MR. CARROLL: I object to the form of the question as inferring a fact which has in no way been proved, namely that the only genuine Webster is the G. & C. Merriam Webster.

A. Very often.

Q. 23. What do they point to about their book

1045

Walter M. Buddecke—Cross.

as indicating that they have a genuine Webster's dictionary? A. The name "Webster."

Q. 24. Anything else? A. No. The name "Webster" was conclusive to them that it was a book that was known as a genuine Webster.

Q. 25. What did they say to you that leads you to make that statement? A. Why, they said "Webster, there is only one Webster on the market." And when I tell them there are many kinds of Websters on the market, they are surprised.

Q. 26. Does the average purchaser from your experience in this matter know the name of the publisher of the standard authoritative Webster's Dictionary? A. No.

Q. 27. What effect does the use of the name "Webster" in the title of a dictionary have upon its sales, and give your reasons for any answers which you may make? A. I simply couldn't sell a dictionary that did not have the name "Webster" printed on it. That is a book that the majority of people want.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 28. You said that the sale of the Syndicate Publishing Company book had reduced the sales of your book fifty per cent. How do you know that? A. By my accounts; the office accounts.

x Q. 29, But you mean your accounts were reduced fifty per cent.? A. Yes.

x Q. 30. How do you know that was caused by the book of the Syndicate Publishing Company being offered for sale? A. By persons first investigating our book and then buying the Syndicate book, because of the difference in price and because they thought they were one and the same book having the name Webster in the title.

Q. 31. Why do they think it was the same book? A. I have answered that question. Be-

cause the name "Webster" being the principal title to it.

Q. 32. Then all that they wanted was a book with the name "Webster" in the title? A. No, they wanted the genuine book.

Q. 33. What book were you selling when all these experiences of your happened? A. With our New International, our latest edition.

Q. 34. Why do you say then that the Syndicate Publishing Company book, which is a small abridged dictionary, bought by an entirely different class of purchasers than the New International cut into the sale of your New International book? A. We sell our book to the poorest person in New York City, if they are honest and have a reputation of paying their obligations. They have never seen our dictionary, they know nothing about the size, and consequently, it is the name "Webster" what induces them to investigate either book. 1050 1051

Q. 35. What is the price of the New International? A. \$19.00.

Q. 36. Isn't that a good deal for the poorest people in New York to pay for a dictionary? A. When a man knows that he is getting the genuine Webster's Dictionary published by G. & C. Merriam Company, they consider that book, the genuine Webster, at even a greater price than what we ask for it; whereas, they think they are badly stung if they get the Syndicate book at eighty-nine mills, and five million coupons. 1052

Q. 37. Upon what do you base your last statement? A. From what people have told me.

Q. 38. Did you ever know anyone who had bought a Syndicate book under those conditions? A. Yes.

Q. 39. Do you know the usual price at which the Syndicate Publishing Company's book has been sold? A. Persons have told me that they

1053

Walter M. Buddecke—Cross.

paid eighty-nine cents, with six coupons; that is the best of my recollection and they considered that even a high price.

Q. 40. You have said that the general public consider that they have a genuine Webster's dictionary when they see the name "Webster" in the title and that they have said this because they imagined that there was only one Webster in the market, what standard did these people have for a genuine Webster when you told them that there were many Websters in the market? A. Among the poorer classes and laboring classes, their standard of the Webster Dictionary was the book found in the public schools; among the better classes, it is the book that is considered authoritative in universities and colleges; among the educated and among lawyers, it is a book that is accepted by the Supreme Court of the United States as the authority; the book that has been endorsed by nearly every Supreme Court Justice throughout the United States and by the majority of literary people.

x Q. 41. Then the poorer people are satisfied that they are getting a genuine Webster if they get the same book that is used in the schools? A. In New York City, yes. My field is simply here in New York City; I know nothing about conditions outside of New York City I am not qualified to express an opinion.

1056 x Q. 42. Do you suppose that the better class of people whom you referred to in answer to the question before last as wanting the great authoritative Webster thought they were getting it for eighty-nine cents? A. Yes.

By Mr. Bean:

x Q. 43. I understood you to say that the fifty per cent. loss in your sales which you claim to have suffered is in your opinion due to the Syndicate

Publishing Company's book? Is that correct? A. I know that to be a fact.

x Q. 44. You do not then attribute any of that loss to any other Webster's Dictionary than that of the Syndicate Publishing Company? A. I shall have to qualify my answer to the former question. When I first went to the Merriam people the Ogilvie book did us a great deal of damage; we then had to fight the Saalfield book; and recently it has been the Syndicate book. 1058

x Q. 45. You know nothing about a dozen or more publishers of Webster's dictionaries, do you? A. No.

x Q. 46. And you think that an eighty-nine-cent dictionary takes the place of and competes with and prevents the sale of our nineteen dollar dictionary with the same class of customers? A. I don't think; I know.

x Q. 47. I understood you to say that you simply could not sell a dictionary without the name "Webster"? A. No. 1059

x Q. 48. Do you know whether the Funk & Wagnalls Company and the publishers of the Century Dictionary, whose books do not have the name Webster ever sell any copies thereof? A. Why, of course they do.

x Q. 49. Then the name "Webster" is not necessary in order to sell a dictionary, is it? A. Yes, it is. When people have not been satisfied that the book I offered them was the genuine Webster; I have offered them the Funk & Wagnalls book, and I couldn't sell that. 1060

x Q. 50. It is a fact; is it not, with you, that the name "Webster" alone is deceptive with the public? A. Well, yes.

x Q. 51. If a publisher other than the Merriam Company should reprint either the 1847 edition which was published by G. & C. Merriam or the

1061

Walter M. Buddecke—Cross.

1864 edition which was also published by them, the only difference being the imprint of the publisher's name on the title page, would or would not such a reprint be, in your opinion, a genuine Webster dictionary?

1062

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as calling for the opinion and conclusion of the witness upon a matter as to which he has not qualified as an expert and for an opinion upon one of the issues of the case, and also because not proper cross-examination.

A. I do not think I am qualified to answer that question.

1063

x Q. 52. If any publisher other than the G. & C. Merriam Company should reprint either the 1847 edition or Webster's dictionary unabridged or the 1864 edition unabridged, would such a dictionary in your opinion be a genuine Webster's dictionary?

1064

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for the opinion of the witness upon a state of facts which does not exist in this case, as the defendants' books are admittedly not a reprint of either of the books referred to, but is a new compilation first prepared in the year 1904 and published under the name of the Crown Dictionary.

A. I think that is a question for the courts to decide.

x Q. 53. You stated in your direct testimony that frequently you were not able to convince people who had purchased dictionaries not published by the G. & C. Merriam Company that they had been imposed upon. How did you attempt to so con-

vince them? A. By showing them that the book originally had been published by the G. & C. Merriam Company, and by such evidence in the way of printed matter as the firm sent me.

x Q. 54. Did you fail to convince them by reason of the fact that they did not believe that the G. & C. Merriam Company were the original publishers of Webster's dictionary? A. No. They didn't know who the original publisher was.

1066

x Q. 55. Did they indicate that if they had known that the book which they purchased was not published by the original publisher of Webster's dictionary or by their successors they would not have made those purchases? A. Yes, in a great many instances.

x Q. 56. And in the other instances what did they indicate? A. Simply a matter of price.

x Q. 57. They said then that they did not care whether the book was published by the original publishers or not? A. In those instances, yes; but they were few. A few persons said that they didn't care; but they were very few.

1067

x Q. 58. Can you state why you failed to convince other persons who nevertheless wanted a dictionary published by the original publishers of Webster's dictionary that they had been imposed upon? A. They simply didn't know who was the publisher, and they had been approached by parties who claimed that they were offering them the genuine dictionary, the genuine Webster's dictionary, and were confused and saw no reason why they should accept my statement as an absolute fact.

1068

x Q. 59. In other words, even after you had explained that the book which they had purchased was not published by the original publisher of the Webster's dictionary, they still believed that they purchased the genuine Webster? A. Yes.

1069

Walter M. Buddecke—Re-direct.

RE-DIRECT EXAMINATION BY MR. HALE:

Re-D. Q. 60. In the instances last mentioned, what do they point to as showing that they had a genuine Webster's dictionary? A. The word "Webster."

1070

Re-D. Q. 61. Do you ever have any discussions with such persons as to whether their book is the current existing book or an old book copied or based upon an expired edition?

MR. CARROLL: I object to that question as assuming a state of facts not proved.

A. Yes.

Re-D. Q. 62. What do they say and think they have in such cases? A. The latest edition.

RE-CROSS EXAMINATION BY MR. CARROLL:

1071

Re-x Q. 63. You would say then from your experience that the general public would consider themselves deceived unless they purchased an abridgment of the very latest unabridged Webster's dictionary? A. Yes.

RE-RE-DIRECT EXAMINATION BY MR. HALE:

Re-Re-D. Q. 64. Provided, of course, there has been time to prepare abridgments of the new unabridged? Is that what you mean? A. Yes.

1072

RE-RE-CROSS EXAMINATION BY MR. CARROLL:

Re-Re-x Q. 65. Do you really think that the purchaser of any one of these abridged dictionaries considers particularly the publisher or the date of publication? A. No, but in wanting a dictionary they always expect and want to buy the latest edition of the genuine Webster.

Re-Re-x Q. 66. Were you ever able to read sufficiently into their minds to ascertain what they

meant by "genuine Webster's dictionary"? A. Yes; why I have asked that question myself a number of times and as stated before in my testimony, among the poorer classes, the laboring classes, they regard the Webster dictionary as used in the Schools of the City of New York, as the only genuine Webster that there is. Among the better classes, they also state that the dictionary used in the schools of the City of New York and Colleges, in fact all educational institutions; among professional men, literary people, and in fact all the educated classes, they refer to the Webster dictionary published by G. & C. Merriam Company and admitted by the Supreme Court of the United States as the authority and accepted by almost every Supreme Court Justice likewise in the United States. 1074

Re-Re-x Q. 67. In your answer you have in mind I suppose the book which you have been selling, Webster's New International Dictionary? A. Yes, and the book that is generally supposed to be the authority on the English language. 1075.

Re-Re-x Q. 68. What is the second book that you mention? A. The Webster Dictionary, all dictionaries published by G. & C. Merriam Company.

Re-Re-x Q. 69. Then you mean to say that educated people do not particularly value a dictionary because it has been in use, as you said before, in colleges, but simply because it is published by the G. & C. Merriam Company? A. It is because the book used in colleges is considered the original. 1076

Re-Re-x Q. 70. What book is that? A. Different editions of the genuine Webster's dictionary as published by G. & C. Merriam Company.

Re-Re-x Q. 71. And if a Webster's dictionary published by some other publisher than the G. & C. Merriam Company were in general use in the

1077

Edward Gash—Direct.

schools and colleges of the place where any particular person had resided or had studied, it would follow, of course, that they would consider that dictionary the only genuine Webster's dictionary?

MR. HALE: Objected to as incompetent, and calling for a pure surmise.

1078 A. I have my doubts about that, because there are very few educated people who do not know who are the publishers of the genuine Webster's dictionary.

Walter M. Buddecke.

DEPOSITION CLOSED.

(Sworn and subscribed to.)

John A. Shields,
Standing Examiner.

1079

EDWARD GASH, being first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Your name is Edward Gash and you reside at 914 Lafayette Avenue, Brooklyn, New York? A. Yes, sir.

1080 Q. 2. What is your occupation? A. Travelling salesman for George B. Hurd & Company.

Q. 3. About what is your age? A. Around forty-one.

Q. 4. Have you known of Webster's dictionary in times past? A. When I was going to school I knew of Webster's dictionary.

Q. 5. And since that time? A. Well, as the word "Webster."

Q. 6. During this period what has been your notion of the merits of Webster's dictionary as an

authority on questions of language? A. Only that Webster's dictionary was a standard dictionary.

Q. 7. Have you recently purchased a dictionary from the New York American? A. Well, I purchased one for eighty-nine cents without any coupons.

Q. 8. About when was that? A. About the latter part of last May or June; I cannot recollect the exact date.

1082

Q. 9. But it was during the period when the New York American was running advertisements of a Webster's dictionary to be given in exchange for coupons and a cash payment? A. Yes.

Q. 10. I show you a dictionary entitled "Webster's New Standard Dictionary" and ask you if that is the identical book which you purchased from the New York American? A. Yes, it has my signature.

Q. 11. Please state the circumstances under which you bought this book, including what you intended to buy and what you thought you did buy and the considerations which induced you to make the purchase. A. I bought it on the strength of the word "Webster" and thought it was a very cheap book at the price.

1083

Q. 12. What relation did you think this book had to the Webster's dictionary of which you had previously known? A. I thought it was the same book, as far as my knowledge of the dictionary goes.

1084

Q. 13. Did you know the specific name of the concern which published the Webster's Dictionary which you had known since you were at school and which you say you have regarded as a Standard Dictionary? A. I did not.

Q. 14. Just what do you mean when you say you bought this book on the strength of the word "Webster"? A. Of the reputation of the name "Webster."

1085

Edward Gash—Cross.

Q. 15. Then if I understand you correctly you thought this book which you bought from the New York American was the book which had the reputation which is attached to the Webster's dictionaries which you have known as standard authority. A. That is correct.

CROSS-EXAMINATION by Mr. Bean:

1086

x Q. 16. Did you examine the book when you bought it? A. No, I did not.

x Q. 17. Did you look at the title page? A. I did not.

x Q. 18. Will you look at the title page now and say whether if you had read that page you would have been misled or deceived into thinking it was a dictionary published by the publishers of the dictionary with which you were familiar when you were a boy?

1087

MR. HALE. Objected to as calling for a mere guess of the witness as to what he would have done under circumstances which he testified did not exist.

A. Well, the word "Webster," looking at the title page, would be enough for me to know that I got a genuine dictionary, so far as my knowledge of the dictionary goes.

x Q. 14. Do you know that you didn't? I do not.

1088

x Q. 15. You have made an affidavit already in this case, have you not? A. Yes.

x Q. 16. How did you happen to make that affidavit? A. Well, Mr. Hale asked me to.

x Q. 17. Mr. Hale I suppose told you that you had not got a genuine Webster, did he? A. Mr. Hale told me that I had not gotten a genuine "Webster" dictionary as published by the G. & C. Merriam Company.

x Q. 18. You yourself do not know, but it may be just as genuine, although not published by the G. & C. Merriam Company, do you? A. I think that is a question for the court to answer.

x Q. 19. You don't know, do you, whether the dictionary with which you were familiar in your boyhood was published by the Merriam Company or not? A. I do not.

1090

By Mr. Carroll:

x Q. 20. How long had you had the book when Mr. Hale discovered that you had it? I don't know the date that I bought the book; it was in June—about six months.

x Q. 21. Had you found the book satisfactory?

MR. HALE: Objected to as immaterial.

A. As far as the price; and I thought I had a genuine Webster's Dictionary at the price.

1091

x Q. 22. You said that you thought it was for the court to decide whether or not this book was a genuine Webster's Dictionary. Nevertheless you have stated that you wanted a genuine Webster's Dictionary. What qualities were there that you really wanted? A. I wanted a genuine Webster's Dictionary, and I thought that is what I was buying.

x Q. 23. Well, what do you mean by a genuine Webster's Dictionary? A. A dictionary known as a Webster's Dictionary when I was a boy.

1092

x Q. 24. If the Webster's Dictionary you used as a boy were published by the Saalfeld Publishing Company, and you were now offered another dictionary published by the Saalfeld Publishing Company, would you consider the present dictionary a genuine Webster's Dictionary?

MR. HALE: Objected to as calling for a mere guess or surmise of the witness, not

1093

Edward Gash—Cross.

based on facts shown to exist and as irrelevant and immaterial.

A. If one was published when I was a boy by the Saalfeld Company, and was published now by the Saalfeld Company I would not know the difference.

x Q. 20. And you would think it genuine? A. As far as my belief would be.

x Q. 21. As a matter of fact, do you care who the publisher is? A. Well, not as long it is a dictionary; but the word "Webster" would carry it a great way in my belief.

MR. CARROLL: I move to strike out the latter part of the answer as not responsive.

x Q. 22. Are you not more interested in the contents of the dictionary than in the publisher? A. You mean in looking up the definition of a word, or something of that kind?

x Q. 23. Yes. A. Yes.

x Q. 24. So that if the contents of the dictionary which you bought are as a matter of fact taken from and based on the original unabridged Webster's Dictionary which was edited and compiled by Noah Webster, you would be satisfied that it was the dictionary that it claimed to be?

MR. HALE: Objected to because it is not shown and it is not the fact that the book contains the same literary contents as any dictionary ever published under the name Webster and is so admitted in the answer.

A. Yes.

x Q. 25. Do you remember whether the school dictionary which you spoke of was a large or a small dictionary? A. As far as I can recollect it was a small dictionary.

x Q. 26. Where was that? A. I went to school in New York and Brooklyn.

x Q. 27. You don't remember the name of the dictionary? A. I remember the word "Webster" as plain as I do my own name.

x Q. 28. You have spoken several times about having been attracted to the book by the reputation of the name "Webster"; you meant by this I suppose the reputation of the editor Noah Webster who originally compiled the great unabridged dictionary? A. I was attracted by the name of "Webster," "Webster's Dictionary." 1098

x Q. 29. What made the name "Webster" attractive to you? A. Because I used it as a boy and I know that Webster's was the standard dictionary as far as my belief.

x Q. 30. What made you think that the dictionary you used in school was the standard dictionary? A. I have no belief that it was the standard dictionary, only that it was used in school and was the "Webster's Dictionary." 1099

x Q. 31. You would have been satisfied then with any selection made by your School Board? A. Certainly would.

RE-DIRECT EXAMINATION BY MR. HALE:

Re-D. Q. 32. What year did you finish your school? A. Somewheres around '85.

Re-D. Q. 33. Do you regard yourself as an expert on dictionaries and as qualified to pass judgment on the intrinsic merits of rival dictionaries? A. I do not. 1100

Re-D. Q. 34. You have stated that you were more interested in the contents of the dictionary than in who published it; upon what did you rely as showing that the contents of this book purchased by you from the "New York American" was worth buying? A. I don't understand the question.

1101

Edward Gash—Re-cross.

Re-D. Q. 35. You stated that you bought the book without examining what was in it. What was there about it that convinced you that you wanted it? A. Why the word "Webster."

RE-CROSS EXAMINATION BY MR. CARROLL:

Re-x Q. 35. What do you want a dictionary for anyway? A. To refer to in looking up a word.

1102 Re-x Q. 36. And you want the spelling and definitions to be correct? A. Yes.

Re-x Q. 37. You bought a Webster's dictionary because you thought that the rules of spelling laid down by Noah Webster and the definitions given in his original dictionary were correct, is that true?

1103 MR. HALE: Objected to on the ground that it has not been shown that this witness ever saw a dictionary prepared by Noah Webster who died many years ago.

A. Yes.

Re-x Q. 38. And you didn't care who the publisher was as long as it met those other qualifications? A. As long as it met those other qualifications.

1104 Re-x Q. 39. You said a moment ago that you bought a dictionary to consult for spelling and definitions, and that you were attracted to this particular dictionary because it bore the name "Webster" and because you had been led to believe since your school days that the spelling and definition of the original Webster dictionary were correct? If it be shown to be the fact that the spelling and definitions in this dictionary follow the same rules and are in general based upon the spelling and definitions of that original Webster dictionary, would you be satisfied with it irrespective of the publisher?

MR. HALE: Objected to as incorrectly

summarizing the testimony of the witness, he having made no reference to what is termed the "original dictionary" prepared by Dr. Noah Webster in his lifetime, but having referred only to the Webster's dictionary which is now regarded as a standard authority.

A. If the book contained the same wording as the original dictionary, yes. 1106

By Mr. Bean:

Re-x Q. 40. When Mr. Hale approached you, did he ask you if you thought you had a genuine Webster? A. Yes.

Re-x Q. 41. Did he tell you that you got a spurious Webster? A. He told me that I did not get the original Webster?

Re-x Q. 42. Whether or not it is genuine or spurious, is not known to you is it, except as Mr. Hale told you? A. Only what he told me. 1107

By Mr. Carroll:

Re-x Q. 43. Does the name "Webster" on a dictionary mean anything to you except that that dictionary contains the correct spelling and definition of a word? A. I answer that, yes.

Re-x Q. 44. What more does it mean to you? A. It means by the name on the book that I have a genuine book. 1108

Re-x Q. 45. Does a genuine dictionary mean any more to you than that the book contains correct spelling and definition? A. That is all.

DEPOSITION CLOSED.

Edward Gash.

Sworn to and Subscribed.

John A. Shields,
Standing Examiner.

1109

Thomas F. Foley—Direct.

THOMAS F. FOLEY, a witness called on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

1110 Q. 1. Please state your name, age, residence, and occupation? A. Thomas F. Foley; age, 36; residence, 560 11th Street, Brooklyn, N. Y.; occupation, traffic supervisor American Telegraph and Telephone Company.

Q. 2. You have previously made an affidavit on behalf of the G. & C. Merriam & Company in this case? A. Yes.

Q. 3. You have also been approached by representatives of the defendant Syndicate Publishing Company in reference to your affidavit? A. Yes.

Q. 4. And you made an affidavit for them also? A. Yes.

1111 Q. 5. Have you a copy of that last affidavit? A. No, sir.

Q. 6. Was a Mr. Ogilvie the representative who called upon you in behalf of the defendant? A. He was one of the defendants.

Q. 7. And Mr. Rankin was the other? A. Mr. Rankin was the other.

Q. 8. Were all the statements made by you in both of said affidavits true to the best of your knowledge, information and belief? A. Yes, sir.

1112 Q. 9. How long have you known of Webster's dictionaries in a general way? A. Ever since I was at school.

Q. 10. Where did you go to school? A. New Foundland.

Q. 11. When did you quit school? A. About '85.

Q. 12. How did you understand the Webster's dictionaries were regarded as standard meritorious works? A. Well, I understood them to be so from hearing of them, or by reputation.

Thomas F. Foley—Direct.

1113

Q. 13. You are referring now to the Webster dictionaries in general use at and since the time you knew of them at school? A. Yes, sir.

Q. 14. In or about the early part of December, 1911, did you purchase a dictionary from the New York American? A. Yes, sir.

Q. 15. What led you to make that purchase? A. Well, I had been attracted to it by the advertisement.

1114

Q. 16. Did you at that time know the specific name of the publisher of the standard authoritative Webster dictionaries to which you have already referred? A. No, sir.

Q. 17. What book did you think was being advertised and what book did you intend to buy when you bought this book from the New York American? A. A Webster's Dictionary.

Q. 18. And what relation did you think it had to the Webster's Dictionary and which you had previously known and which enjoyed the reputation which you have stated? A. At the time I obtained it I was under the impression that it was a Webster's Dictionary.

1115

Q. 19. Published by the same or different publishers than the other Webster's dictionaries to which you have referred? A. Well, I hadn't given the matter much thought. I was under the impression that all Webster's dictionaries were the same.

Q. 20. I show you a dictionary entitled "Webster's New Illustrated Dictionary," and ask you if that is the identical volume which you purchased from the New York American? A. Yes, sir.

1116

Q. 21. Did you examine this dictionary at or before you purchased it or did you purchase it by its name and advertisement alone? A. I did not examine it before purchasing, taking it for granted that it was a Webster Dictionary.

1117

Thomas F. Foley—Direct.

Q. 22. Because it was called such? A. Because of its name.

Q. 23. Upon the title page of this book which you bought appears the following statement: "This dictionary has been revised and brought up to the present date in accordance with the best authorities and is not published by the original publishers of Webster's Dictionary or by their successors." When did you first, if at all, notice that statement or learn that it was in the book? A. The night after making an affidavit for Mr. Hale.

Q. 24. What called it to your attention then? A. Well, up to that time I hadn't taken much interest in it but when I went home I took the book out of its wrapping and examined the title page and found the statement, that the book was not published by the publishers of the original dictionary.

1119 Q. 25. You did not know who these original publishers were? A. No, sir.

Q. 26. Of your own knowledge, do you know now, whether or not this book is a genuine Webster's Dictionary?

MR. BAYNE: I object to the form of the question in that it assumes that the dictionary referred to is not a genuine Webster Dictionary and there is no evidence to that effect.

1120

A. All that I know about it is what I am told about it in the announcement on the title page of that book.

Q. 27. Did you notice the same or a similar announcement in the advertisements which led you to purchase it; I mean before you completed your purchase. A. Not before I obtained the book.

Q. 28. As you did not examine the book before buying it, upon what did you rely to show that it was a good dictionary worth buying? A. I was under the impression that any book bearing the name of "Webster" was worth ninety-eight cents.

CROSS-EXAMINATION BY MR. BAYNE:

x Q. 29. Did the word "Webster" mean to you 1122
correct spelling and correct definitions in the dictionary? A. I understood that a Webster dictionary was a standard dictionary, and I was perfectly satisfied to accept the spelling and definitions of any word or words contained in it.

x Q. 30. Did the word "Webster" indicate to your mind anything more than that the dictionary so labelled contained standard spelling and standard definitions? No, sir.

x Q. 31. When Mr. Hale questioned you preliminary to your giving an affidavit did he state to you that the dictionary you had bought was a spurious Webster dictionary? A. I do not recall that he used the word "spurious." 1123

x Q. 32. Did he state it was not a genuine Webster dictionary? A. I don't know that he did. But I inferred from what Mr. Hale did say that it was not a copy of the original Webster.

x Q. 33. Does the expression a "Webster dictionary" mean to your mind a dictionary containing the Websterian spelling and Websterian definitions by whatever publisher published? A. Yes, for the reason that I was under the impression that all Webster dictionaries were published by the same people or their agents. 1124

x Q. 34. But if you were offered a dictionary containing the same literary matter, the same Websterian spelling and Websterian definitions, would it matter to you who published it? A. No, sir.

1125

Thomas F. Foley—Cross.

x Q. 35. Is not therefore the word "Webster" one which conveys to your mind solely the idea of literary excellence? A. Yes, sir.

By Mr. Carroll:

x Q. 36. In the affidavit which you gave to Mr. Hale sworn to on the 18th of December in this action, you stated as follows:

1126 "I understood and believed when I bought the dictionary that I was getting a genuine Webster's dictionary." Do you still believe that?

MR. HALE: Objected to as irrelevant and immaterial. The present belief of the witness being wholly immaterial.

A. Your question is really two questions and really calls for two answers, as I understand it. At the time that I got this dictionary I was under the impression that it was a Webster's dictionary; since making that affidavit I have looked into the matter more fully and in view of the announcement made in the American's advertisement and also on the title page of the book, I am quite satisfied that the book was not published by the same publishers as the original Webster dictionary.

1127 x Q. 37. Do I understand you to say, then that in your mind the genuine Webster's dictionary must be a dictionary published by the same original publisher? A. Yes. Published by the same original publishers or their agents or somebody delegated by the original publishers to publish the work.

1128 x Q. 38. Would a reprint of one of the earlier editions of Webster by some other publisher than the so-called original publishers be in your mind a genuine Webster dictionary? A. I don't feel qualified to answer the question, but I would probably be as well satisfied with the reprint.

RE-DIRECT EXAMINATION BY MR. HALE:

Re-D. Q. 38. If you should go into a store to-day and ask for a Webster's dictionary and in place of being given a copy of the current book now in general use, you were given a reprint of a book of different contents and published in the year 1847, would you be receiving the book you intended to buy when you asked for Webster's dictionary? A. Not unless the book had been brought up-to-date by annexes. 1130

Re-D. Q. 39. In your affidavit on behalf of defendant you stated as follows:

"I am now convinced that I was induced to make the aforesaid affidavit (referring to your affidavit for complainant) through misrepresentations, and while I regret having made such an affidavit am glad of the opportunity to rectify the mistake." Please state what are the alleged misrepresentations to which you here refer? A. I do not recall. What I meant was that at the time I secured this book I had not noticed the announcement contained in the advertisement or the title page that this book was not published by the original publishers of the Webster dictionary. If I had noticed it, it is doubtful if I would have made the first affidavit. 1131

Re-D. Q. 40. Is that all you meant by the quoted statement. A. Yes.

Re-D. Q. 41. You do not now charge or claim that Mr. Hale made any misrepresentations to you whatever, is that correct? A. Yes. Mr. Hale's talk with me, as I remember it, bore no misrepresentations. The only thing that made me change my mind after making the first affidavit was the fact that I afterwards noticed the announcement in the advertisement and in the title page that the book was not published by the original publishers. 1132

Re-D. Q. 42. Please look at the affidavit that you

1133

Thomas F. Foley—Re-direct.

made for the complainant at the request of Mr. Hale and point out any statement in it which is not true in manner and form as stated. A. The affidavit which I made for Mr. Hale was true in every respect, to the best of my knowledge at the time the affidavit was signed.

1134

Re-D. Q. 43. And it is true to-day, except that you have since learned that the book bore a statement that it was not published by the original publishers or its successors, is that correct? A. Yes, sir.

1135

Re-D. Q. 44. And the only thing in that affidavit which you wish to rectify and which you deem a mistake is the statement that you had no reason to think that the book was not a genuine Webster's dictionary, is that correct? A. Yes, sir. I might add that I am not quite sure that the words "Beware of other dictionaries" appeared in the advertisement which led me to purchase the book.

1136

Re-D. Q. 45. You did, however, state that fact to Mr. Hale before he drafted the affidavit for you did you not? A. Yes, I probably used those words, as it is a common phrase applied by nearly all advertisement writers.

Re-D. Q. 46. In your affidavit for defendant you have compared the defendant book with certain books of the complainant expressing an opinion in favor of the merits of defendant's book. You refer especially to its definitions in which you say it is better and more modern. I notice in the book which you bought that the words "Turkish Bath" is defined simply as "A hot air bath." Do you regard that as a correct definition? A. I do not feel qualified to define Turkish bath.

Re-D. Q. 47. The word "pasteurize" is defined in the defendant's book purchased by you as follows: "To inoculate with the bacillus which produces a specific disease." How do you think that applies to the phrase "pasteurized milk"?

Thomas F. Foley—Re-direct.

1137

MR. CARROLL: I object as incompetent, irrelevant and immaterial, calling for an answer which the witness is not qualified to make.

A. I am not qualified to define the word "pasteurize."

Re-D. Q. 48. I have here a list of words taken from defendant's dictionary either inaccurately defined or incorrectly spelled or subject to some other criticism; do you decline to express an opinion as to the correctness of defendant's dictionary upon those subjects? 1138

MR. CARROLL: I object to that question as incompetent, irrelevant and immaterial; assuming a state of facts not proved.

A. I decline on the ground, I consider I am unqualified to pass judgment on any dictionary. 1139

Re-D. Q. 49. In your affidavit on behalf of defendant, however, you have stated that defendant's dictionary is better in every respect than the complainant's Webster's Collegiate dictionary and the complainant's Webster's Condensed Dictionary. The two errors to which I have called your attention in defendant's dictionary were not pointed out to you at the time you made that affidavit, were they?

MR. CARROLL: I object to that question because it contains a statement which is not true, namely, that Mr. Hale has pointed out two errors in the dictionary of the defendants. 1140

A. No, these errors were not pointed out to me.

Re-D. Q. 50. And you now disclaim the qualification to express an opinion on the relative merits of dictionaries? A. Yes, sir.

1141

Thomas F. Foley—Re-cross.

Re-D. Q. 51. Is there anything else you would like to add to your deposition so as to complete the facts, and if so, please do it now. A. In stating that I considered the New York American Dictionary more up-to-date than the Webster's Collegiate dictionary I made this statement after Mr. Rankin had turned to the word "locomotive" in the Webster's Collegiate Dictionary and pointed out to me
 1142 that the smokestack of a locomotive was called the "chimney." And my opinion was based upon that fact. It is quite possible that Mr. Hale could have taken the New York American Dictionary and pointed out a definition of some word just as much behind the times as "chimney" for smokestack.

Re-D. Q. 52. But as a matter of fact, Mr. Hale did not enter upon any such comparison with you in order to induce you to make the affidavit which you did make, is that correct? A. Mr. Hale, as I
 1143 remember, did turn to some word in the New York American Dictionary, I have forgotten exactly what the word was, and pointed out that the word in question was defined at greater length in the Webster's Collegiate Dictionary than in the one that I had obtained from the New York American.

RE-CROSS EXAMINATION by Mr. Carroll:

Re-x Q. 53. Will you explain the circumstances under which you made this affidavit entitled in this
 1144 action dated January 29th, 1912. A. Mr. Rankin and another gentleman, whom he introduced as Mr. Ogilvie, called at my house, 560 11th Street, Brooklyn, and said, "You have made an affidavit for an attorney named Hale in reference to a book which you obtained from the New York American, and we would like to have you point out to us why you made that affidavit." And as I remember it, Mr. Rankin's questions were mostly along the line as to whether I considered I had

been imposed upon when I got this book from the New York American. I think I made it clear to Mr. Rankin I did not consider I had been imposed upon or swindled and that I was fairly well satisfied with the book I had obtained, and which I consider worth more than what I paid for it.

Re-x Q. 54. I show you this affidavit referred to above and ask you if there are any corrections which you wish to make. A. I am willing to answer any questions that you may put to me in reference to this affidavit. 1146

MR. CARROLL: I move the answer be stricken out.

Re-x Q. 55. (Re-x Q. 54 repeated.) A. I have already gone over this and I will let the answers stand that I gave to Mr. Hale.

Re-x Q. 56. Isn't it a fact that this affidavit was presented to you in draft form and corrected in accordance with suggestions made by you? A. Yes. Mr. Rankin presented this affidavit to me three times altogether; the paragraph that I objected to, the exact wording of which I have forgotten, was finally changed at my suggestion to read, "I did not notice at the time the announcement in the New York American calling attention to the fact that the book was not published by the original publishers of Webster's dictionary, or by their successors," but later on I noticed the announcement and also ones to the same effect on the title page in the book. The foregoing is the paragraph which I corrected for Mr. Rankin. Mr. Rankin had definitely stated in the draft of the original affidavit the attorney whom I had made the first affidavit for was named "Hale." I had Mr. Rankin change this to read, "an attorney whose name I think was 'Hale'." 1148

Re-x Q. 57. In your answer to one of Mr. Hale's

1149

John D. McCarthy--Direct.

questions you stated that you did not consider yourself qualified to pass judgment on any dictionary. Did you not mean qualified to pass judgment on the correctness of the definitions of any dictionary? A. I meant, while I may pass judgment on the spelling or definitions, I was not qualified to pass expert opinion or judgment.

1150

DEPOSITION CLOSED.

Thomas F. Foley.

Sworn and subscribed to—

John A. Shields.

Standing Examiner.

1151 JOHN D. MCCARTHY, a witness called on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. John D. McCarthy; age, 49, residence, 56 14th Street, Flushing, N. Y.; occupation, salesman.

Q. 2. You are salesman for what concern? A. J. D. McCarthy Company.

1152 Q. 3. Dealers in what? A. Typewriter supplies.

Q. 4. In the course of your business have you since January 1, 1911, distributed any copies of a book entitled "Webster's New Illustrated Dictionary"? A. Yes, sir.

Q. 5. From whom do you obtain those books? A. Syndicate Publishing Company.

Q. 6. Do you buy them outright or if not, please state just the general nature of your arrangement? A. Bought outright.

Q. 7. I show you a book entitled Webster's New Illustrated Dictionary and ask you if that is the dictionary that you have distributed as stated?

A. Yes, sir.

Q. 8. Are you still distributing these dictionaries? A. Yes, sir.

Q. 9. I notice upon the title page of the dictionary identified by you, the following words: "1911—Published for J. D. McCarthy Co., New York, manufactures and distributors of Brighton Brand Carbon papers and typewriter ribbons." How do these words come to be inserted upon the title page of that book? A. We do that ourselves. 1154

Q. 10. Do you mean that you yourselves print the title page of the books distributed by you? A. Yes, sir.

Q. 11. Where do you have the work done? A. What do you mean, the printing or the insertion?

Q. 12. The printing first and then the insertion. A. The printing was done by a firm E. N. Katz, and their address is 204 Centre Street, I think, New York. The insertion was done by ourselves in our own office. 1155

Q. 13. Is the title page tipped in into books already bound? A. Yes, sir.

Q. 14. Do you obtain bound books from the Syndicate Publishing Company without a title page and then tip in your own title page? A. We buy the books from the Syndicate Publishing Company complete with the title page, but after we get possession we insert our own title page giving the publisher full credit for the work. 1156

Q. 15. From what source did you derive the copy for the printed matter which appears upon this page other than the portion already quoted which relates directly to the McCarthy Company? A. That is a fac-simile of the title page of the book furnished to us by the Syndicate Company, only that we get the form set up more compactly.

1157

John D. McCarthy—Direct.

Q. 16. Was this cancellation and substitution of title pages pursuant to any arrangement made with the Syndicate Publishing Company in any manner?

MR. CARROLL: I object to this whole line of questioning as incompetent, irrelevant and immaterial and not within the issues.

1158 A. No, sir.

Q. 17. Do you remember selling this particular book that you have identified to Mr. Hale? A. Yes.

Q. 18. And that was on or about the 18th day of December, 1911? A. Yes, sir.

Q. 19. I show you an advertising leaflet and ask you if that is one of the advertisements issued by the J. D. McCarthy Company in connection with the distribution of these dictionaries?

1159 (Same objection, and to similar questions throughout.)

A. Yes.

Q. 20. Are you now distributing similar advertisements? A. Yes, sir.

Q. 21. And have done so since January 1, 1912? A. Yes, sir.

1160

MR. HALE: The dictionary identified by the witness is offered in evidence and marked "Complainant's Exhibit, McCarthy Dictionary, Jas, Exr., February 15th, 1912."

Also the advertising leaflet is offered in evidence and marked "Complainant's Exhibit, McCarthy advertisements, Jas Exr, February 15, 1912."

MR. CARROLL: I object to both exhibits as irrelevant and immaterial.

Q. 22. Who composed or prepared the copy for the matter printed in this advertisement upon either side? A. By our company.

Q. 23. What individual? A. The copy on the side of the page containing the words "Webster's Dictionary Coupon," was prepared by myself and the other side, with the cut of the dictionary was taken from a stock form of the Syndicate Company's literature on this book.

Q. 24. Did they furnish you literature for the purpose of preparing advertisements? A. No, sir. 1162

Q. 25. They furnished you nothing whatever? A. Only what I bought.

Q. 26. Did you buy any advertising literature?

A. Yes, from the Syndicate Pub. Co.

Q. 27. Have you any samples of it? A. No, sir.

Q. 28. Did the Syndicate Publishing Company supply you with the cut of the dictionary which appears on the advertising sheet offered in evidence? A. Yes, sir. 1163

Q. 29. I show you a box or carton and ask you if that is the box in which you distribute the said dictionaries? A. Yes, sir.

Q. 30. Who prepared the printed matter that appears thereon? A. I did.

MR. HALE: The Carton is offered in evidence and marked "Complainant's Exhibit, McCarthy's Carton, JAS EXR, February 15th, 1912." 1164

Q. 31. When did you obtain your last supply of dictionaries from the Syndicate Pub. Co.? A. I could not tell you the exact date; some time in the latter part of December.

Q. 32. What is the arrangement upon which you distribute these dictionaries to your customers? A. We use them as an advertising medium;

1165

John D. McCarthy—Cross.

we both give away and also sell on the presentation of one of those coupons to our office:

Q. 33. What is the selling price when you do sell them? A. We don't sell them; we give one with a coupon and eighty cents.

Q. 34. What are the conditions upon which you give them without any cash payment? A. To introduce our Brighton Brand carbon paper and
1166 ribbons; on the minimum amount of ten dollars we will give one of those books free on an initial order.

Q. 35. You were subpoenaed to come here and give this testimony and do not appear as a volunteer witness, do you not? A. Yes, sir.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 36. You say you sold one of these dictionaries to Mr. Hale, where was that? A. At our
1167 office then at 142 Fulton Street and we are at the present time at 176 Fulton Street.

x Q. 37. What was said between you and Mr. Hale? A. I think when Mr. Hale come to see me there first off he asked me if I bought this dictionary from the Syndicate Publishing Company and whether I was imposed upon. I told him I did buy it from the Syndicate Publishing Company, but I did not think that I was imposed upon as I got the worth of my money.

1168 x Q. 38. You got what you expected to get? A. Yes, sir; got the value.

x Q. 39. And you got a Webster's Dictionary?

MR. HALE: Objected to as calling for the witness' opinion on a question at issue which is for the court and not the witness to determine.

A. Yes, I got Webster's dictionary, hundreds of them.

x Q. 40. Did you ever handle any other Webster's dictionary? A. Yes, sir.

x Q. 41. What one? A. I handled one published by E. A. Miles of South Lancaster, Mass.

x Q. 42. Was that an abridged dictionary? A. An abridged.

x Q. 43. Do you remember what it was called? A. Webster's Pocket.

x Q. 44. Did any one of your customers ever return either one of the Webster's New Illustrated dictionaries which you purchased from the Syndicate Publishing Company or one of the Pocket dictionaries which you have just mentioned alleging that they had not received what they expected to get? A. No, I have always had satisfied customers on those books; in fact they recommended them to friends and came for more. 1170

x Q. 45. From your experience, and from your general knowledge, what does a Webster's dictionary mean to you? 1171

MR. HALE: Objected to as not proper cross examination and as calling for the opinion of the witness upon a question as to which he has not been qualified as an expert.

A. Book based on Noah Webster's Unabridged.

x Q. 46. In your mind, does the title "Webster's dictionary" suggest any particular publisher? A. No, sir. 1172

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 47. You have heretofore made an affidavit for the defendant in this case, or one of them? A. Yes, sir.

Re-D. Q. 48. When did you make that affidavit? A. About a week ago.

1173

John D. McCarthy—Re-direct.

Re-D. Q. 49. Under what circumstances and at whose request?

MR. CARROLL: I object to this line of questions as not proper re-direct.

1174

MR. HALE: Defendant made the witness his own by exceeding the limits of cross-examination and complainant is entitled to fully test the witness's position upon the matters testified to.

A. I was up in the office of the Syndicate Publishing Company in regard to an inquiry for some of our goods when I met Mr. Wright and he interrogated me on this subject.

Re-D. Q. 50. Was the affidavit made then and there? A. No, sir.

1175

Re-D. Q. 51. What next took place? A. He asked me a few questions on the subject, and asked me if I ever heard of the Merriam Publishing Company in connection with dictionaries. I told him I did not.

Re-D. Q. 52. Was anything said between you as to what constituted the Webster's Dictionary? A. No, sir.

1176

Re-D. Q. 53. Neither at that time nor at any other time? A. He asked me would I testify in regard to my opinions on this Webster Dictionary, and I told him I would if it was made in proper form with my belief. He called in somebody, stenographer I believe, to take down questions and my answers, and I told him that if an affidavit was made out in that form that I would sign. After the elapse of a few days I got a letter from the Syndicate Publishing Company specifying a time to call; I did so call. The affidavit was prepared; it met with my approval and I signed.

Re-D. Q. 54. When did you first hear of Web-

John D. McCarthy—Re-direct.

1177

ster's Dictionary in your whole life? A. When I was a boy at school.

Re-D. Q. 55. And you have heard of it more or less ever since? A. Yes, sir.

Re-D. Q. 56. When you stated that you had hundreds of Webster's dictionaries, you meant copies of Webster New Illustrated Dictionary obtained from the Syndicate Publishing Company, did you not? A. Yes, sir.

1178

Re-D. Q. 57. Did the Syndicate Publishing Company or any one purporting to act for them warn you of any restrictions upon the right to use the name "Webster" upon any of the dictionaries? A. No, sir.

Re-D. Q. 58. When you first took up this book as an advertising proposition, did you first broach the proposition or did some one representing the book broach it to you? A. I broached the subject myself.

J. D. McCarthy.

1179

DEPOSITION CLOSED.

(Sworn and subscribed to.)

John A. Shields,

Standing Examiner.

MR. HALE: Complainant's Counsel offers in evidence the dictionary identified by the witness Thomas F. Foley and the same is marked "Complainant's Exhibit, Thomas F. Foley's Dictionary, Jas., Exr., February 15th, 1912."

1180

Also, the dictionary purchased and identified by the witness Edward Gash, and the same is marked "Complainant's Exhibit, Edward Gash's Dictionary, Jas., Exr., February 15th, 1912."

IT IS STIPULATED by the respective Counsel that all objections to questions asked by Counsel for Complaint whether made ostensibly by either Counsel for Syndicate Publishing Company or

1181

Arthur Lutz—Direct.

Cupples & Leon Company, shall be equally available to both, and,—

Further that all cross-examination whether ostensibly by Counsel for Syndicate Publishing Company or Cupples & Leon Company shall be deemed to have been carried on in behalf of each of the respective defendants, and if it shall be necessary, may be read into the record in each
1182 case separately.

Adjourned, to meet in New York, at same place, Monday, February 19th, 1912, at 11 o'clock in the forenoon.

NEW YORK, February 19th, 1912.

Met pursuant to adjournment.

1183

Present—MR. HALE for Complainant.

MR. CARROLL on behalf of both Defendants.

ARTHUR LUTZ, called on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please give your name, age, residence and
1184 occupation? A. Arthur S. Lutz; age, 18; residence, 975 Bedford Avenue, Brooklyn; occupation, clerk for the American Steel & Wire Company.

Q. 2. Where did you attend school? A. Public School No. 45, and Commercial High School, Brooklyn.

Q. 3. How long have you known of Webster's Dictionaries? A. Why I should say about five or six years, as far back as I can remember through school.

Q. 4. Did you use a Webster's dictionary in school. A. Used the Webster's High School Dictionary in the Commercial High School; it was given out by the school there to be used by the pupils; it was one of the regular books in the first two terms.

Q. 5. What was the reputation of Webster's dictionaries as good and reliable books as you understood it? A. My understanding was the Webster's dictionary was the best authority that could be had. 1186

Q. 6. Have you recently had occasion to purchase a dictionary? A. I have.

Q. 7. When and under what circumstances? A. I purchased a dictionary through the Brooklyn Times, giving six coupons and ninety-eight cents for same.

Q. 8. Was this on or about October 11, 1911? A. About that time.

Q. 9. How did you come to buy this book from the Brooklyn Times? A. Saw the advertisement and coupons in the paper. 1187

Q. 10. I show you a book entitled "Webster's New Standard Dictionary" and also a carton bearing the label and ask you if that is the identical book which you bought and if it came in that or a similar carton? A. That is the book which I purchased and it came in a carton similar to that, if not that same one.

Q. 11. Did you at the time you purchased this book know the specific name of the publisher of the Webster's dictionaries which you say had a favorable reputation in your mind? A. I did not know. 1188

Q. 12. Did you know whether or not there was more than one publisher issuing dictionaries under the name of Webster? A. I did not.

Q. 13. What did you know or believe on that

1189

Arthur Lutz—Direct.

subject? A. I believed that Webster Dictionary was published by one company, the name of which I did not know.

Q. 14. What book did you think and intend to buy when you bought this book? A. I thought I was buying a copy of the Webster dictionary.

1190 Q. 15. What connection did you think it had with the Webster's High School Dictionary which you had used at school? A. I believed the book which I was about to purchase was published by the same company as that which published the one I used in school.

Q. 16. Did you examine this book at or before the time you purchased it? A. I ran through the pages, but did not examine very closely.

1191 Q. 17. Upon what did you rely, if anything, in deciding that the book was worth buying at the price? A. Why I relied upon the fact it appeared to be a pretty fair edition of Webster's dictionary.

Q. 18. Did the good reputation of Webster's dictionaries in your mind have anything to do with causing you to purchase this book? A. I believed that in purchasing a Webster's dictionary I was getting the best book and the best value for the money I paid out.

1192 Q. 19. Of your own knowledge and aside from what you have been told by anyone, do you know whether or not the book you bought from the Brooklyn Times is or is not a genuine Webster's dictionary? A. I do not know.

Q. 20. But what was your belief at the time you bought it? A. I believed it was a book which was published by the company which I assumed published all Webster's dictionaries.

Q. 21. Did you purchase more than one copy? A. I purchased another copy at a later date.

Q. 22. For whom? A. Purchased it for my father.

Q. 23. And at that time were you still under the same beliefs and impressions as to what you were buying as you have just testified to? A. Yes.

Q. 23. You are the Mr. Lutz who made an affidavit for complainant on December 19th, 1911, are you not? A. Yes.

Q. 24. Since that time have you been approached by a representative of either of the defendants in this case? A. I have.

1194

Q. 25. How many times? A. I was interviewed by a representative of the Brooklyn Times once.

Q. 26. Do you recall his name? A. I do not.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 27. What did you buy these two dictionaries for? A. I had no good dictionary in the house and wished to have one on hand.

x Q. 28. What do you use a dictionary for? A. Merely for reference, when I have occasion to look up a word not understood by me. 1195

x Q. 29. What qualities do you value in a dictionary? A. Firstly, a reliable definition; and a full and complete definition.

x Q. 30. You knew that the book which was purchased was an abridged dictionary, of course? A. I did.

x Q. 31. And you did not expect to find absolutely full definitions in it? A. Not such as would be found in an unabridged dictionary.

1196

x Q. 32. Provided then that the definitions in any given dictionary are accurate and as full as could be expected in an abridged dictionary, would the agent or the corps of typewriters, printers, etc., which had constructed or manufactured the book make any difference to you? A. It would not.

x Q. 33. Did the word "Webster" in the title of the dictionary which you purchased indicate any-

thing more to you than that the dictionary so labelled contained standard spelling and standard definitions? A. My impression had always been that the Webster Dictionary was the best authority and in fact I have seldom had occasion to refer to any other, and for this reason I relied upon the name "Webster" as it appeared on the cover of the book as something which indicated that I was
 1198 to get the best book obtainable for the price.

x Q. 34. You stated in answer to a question of Mr. Hale's on direct examination that you believed the book which you were about to purchase, Complainant's Exhibit, Lutz's Dictionary, was published by the same company as that which published the one used by you at school. Would you have believed this to be the case had you known at the time that Webster's dictionaries are published by many different publishers?

1199

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as purely hypothetical and calling for the witness's guess as to what he would or might have thought under circumstances not shown to exist.

A. Such a circumstance might have altered my opinion.

x Q. 35. Does the expression a "Webster Dictionary"
 1200 ary" mean to your mind a dictionary containing the Websterian spelling and Websterian definitions by whatever publisher published?

MR. HALE: Objected to upon the ground that it calls for a conclusion of the witness as to the meaning of the word "Websterian," which is not a recognized adjective and because it does not appear that the spelling and definitions as contained in Webster's Dictionary are any different

from the spelling and definitions in other standard dictionaries, such as the Century or the Standard.

A. I believe that any book called a "Webster" dictionary must be connected and based upon Webster's original definitions.

x Q. 36. If you were offered then a dictionary containing the same literary matter with its spelling and definitions based upon the original unabridged dictionary edited and compiled by Noah Webster, would it matter to you who published it? 1202

A. If this book was a reliable edition of the Webster Dictionary, which I know to be the best authority, regardless of who publishes it, it would not matter to me.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 37. You spoke of Webster's original definitions. By that do you mean the definitions contained in the standard current Webster Dictionary now in general use or the definitions contained in some dictionary published more than fifty years ago? A. I believe I mean by that the definitions on which all of the genuine Webster books are based. 2103

RE-CROSS-EXAMINATION by Mr. Carroll:

Re-x Q. 38. You mean by the answer to your last question that for most words which have long been in general use, you want the same definitions which were given in the original dictionary of Noah Webster, am I correct? A. You are correct, if they be the most accurate and reliable definitions in use. 1204

DEPOSITION CLOSED.

Arthur Lutz.

Sworn and subscribed to.

John A. Shields,
Standing Examiner.

1205

Edward J. McMahon—Direct.

AFTER RECESS:

MR. HALE: Complainant offers in evidence the dictionary and the containing carton identified by the witness Arthur Lutz and the same are marked respectively "Complainant's Exhibit Lutz's Dictionary" and Complainant's Exhibit Lutz's Dictionary Carton."

1206

EDWARD J. McMAHON, a witness called on behalf of the complainant being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please give your full name, age, residence and occupation? A. Edward J. McMahon; age, 42; residence, 100 South Third Street, Brooklyn; occupation, fashion artist.

1207

Q. 2. By whom are you employed? A. Butterick Publishing Company.

Q. 3. Where were you educated? A. Brooklyn.

Q. 4. Did you attend the public schools? A. Yes.

Q. 4. About when did you quit school? A. About 1886.

Q. 5. Have you ever heard of Webster's Dictionary? A. Oh, yes.

1208

Q. 6. How long have you known of Webster's dictionaries? A. During my school days and since.

Q. 7. What is the standing and reputation of the Webster's dictionaries to which you refer as understood by you? A. I should say of the highest.

Q. 8. Have you recently had occasion to purchase a dictionary, and if so, state under what circumstance and when you did so? A. About June, 1911, I saw the advertisement of the Webster's Dictionary in the Brooklyn Times. I purchased three of them.

Q. What was there about this advertisement that attracted you to make this purchase? A. Being that it was a Webster's Dictionary and the price so cheap.

Q. 10. How did the fact that it was advertised as a Webster's Dictionary attract you? A. I don't understand the question.

Q. 11. You stated that you were attracted to make this purchase by the fact that the book was advertised as Webster's Dictionary. Please explain that answer a little more fully. A. The Brooklyn Times advertised this dictionary for sale for ninety-eight cents; and I think twelve coupons. It looked like a very good offer to me and I availed myself of the opportunity. 1210

Q. 12. At the time you made this purchase did you examine the book before buying it? A. I did not.

Q. 13. How did you know it was worth buying? A. Only that I understood it would be a Webster's Dictionary. 1211

Q. 14. At that time did you know the specific name of the publisher of the Standard Webster Dictionaries that you have said you regarded favorably?

MR. CARROLL: I object to the form of that question on the ground that this witness has not stated that he regarded favorably any particular Webster's Dictionary. 1212

(Question withdrawn.)

Q. 15. At the time you made this purchase, did you know the name of the publisher of the Webster's dictionaries which you stated had a standing and reputation of the highest? A. No.

Q. 16. What connection did you think there was between the book sold by the Brooklyn Times, and the Webster's dictionaries of high authority

1213

Edward J. McMahon—Direct.

of which you had previously known? A. I thought it was published by the same people.

Q. 17. What effect on your mind did the reputation of Webster's dictionaries have in leading you to make this purchase from the Times? A. It had the effect of making up my mind that I would buy one.

1214 Q. 18. I show you a dictionary entitled "Webster's New Standard Dictionary, and ask you if that is the identical book which you purchased from the Brooklyn Times? A. It is.

MR. HALE: The book identified by the witness is offered in evidence and marked "Complainant's Exhibit Edward J. McMahon's Dictionary, JAS. EXR, February 19th, 1912."

1215 Q. 19. Assuming that this dictionary which you bought, was originally published in the year 1904 under the name of the Crown Dictionary by publishers and editors who were in no way connected with the publishers who have continuously published Webster's dictionaries for more than sixty years and that this book is founded to a greater or less extent upon Webster's Dictionary of the year 1847, but not upon any subsequent edition of that work, such as have been issued in later years by the original publishers and their successors,—assuming those facts to be true, did
1216 you or did you not get the book you thought you were buying?

MR. CARROLL: Objected to as assuming a state of facts not proven by any of the evidence in this case.

A. I did not.

Q. 20. At the time you purchased this book did you know whether or not there were any diction-

aries called "Webster's dictionaries" not published by the same publisher as the Webster's dictionaries of high reputation to which you have referred? A. I did not.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 21 Upon what did you base your impression as to the book you thought you were buying?

A. On the reputation of the Webster's dictionary. 1218

x Q. 22. What representations were made to you about that dictionary which you purchased?

MR. HALE: Objected to because the witness has not testified that any representations were made other than the advertisements in the Brooklyn Times, which are themselves the best evidence.

A. Only the representations that were in the Brooklyn Times advertisements. 1219

x Q. 23. It is stated on the title page of the dictionary that you purchased that the dictionary is based on the unabridged dictionary of the English language of Noah Webster LL.D., revised and brought up to date in accordance with the most recent eminent, English and American authorities. If it be shown that that statement upon the title page of this book is correct, did you or did you not get the book you thought you were buying?

A. I thought I was buying a Webster's dictionary. 1220

x Q. 24. If the statement that I stated to you is correct, did you or did you not get the Webster's dictionary you thought you were buying? A. If that statement made it a Webster's dictionary, I did.

x Q. 25. Then if in spite of the assumed facts stated by Mr. Hale in his question, the dictionary assumed to be described by him in that question

1221

Edward J. McMahon—Cross.

were nevertheless a Webster's dictionary, then you did get the book you thought you were buying?

MR. HALE: Objected to as once fully answered.

A. Your previous question put an "if" and now you are saying it as if it were a fact. No,
1222 I did not.

x Q. 26. Then you wish to correct your answer to my previous question, namely that you thought you were buying a Webster's dictionary? A. I do not want to correct it; I was looking for a Webster's dictionary.

x Q. 27. Whose decision as to what is or is not a Webster's dictionary do you depend upon?

MR. HALE: Objected to as irrelevant and immaterial because according to the witness's testimony he never knew that there was ever any question about what constituted a Webster's dictionary to be decided by anyone.
1223

A. I merely went by the reputation of Webster's dictionary; it had a high reputation and I didn't know there were more than one firm publishing it.

MR. CARROLL: I object to the answer as not responsive and move it be stricken out.
1224

x Q. 28. (x Q. 27 repeated).

A. Well, I will have to wait until this suit is settled.

x Q. 29. In the first questions which were asked by Mr. Hale of you, he referred repeatedly to Webster's dictionaries; what dictionaries did you have in mind when you answered those questions? A. The Webster's unabridged dictionaries.

x Q. 30. Have you any idea when they were published? A. I have now.

x Q. 31. Did you have at that time? A. No definite idea.

x Q. 32. What was your approximate idea? A. Well, a great many years ago. I could not say.

x Q. 33. When you purchased this book did you expect to get a book published by any particular publisher? A. I stated before that I thought there was only one publisher of Webster's dictionaries. 1226

x Q. 34. Did you really have the publisher in mind at all when you purchased this book? A. No.

x Q. 35. Wasn't the first time that you thought about any particular publisher in connection with this book the time when Mr. Hale discussed it with you? A. It was.

x Q. 36. Weren't you as a matter of fact in buying a Webster's dictionary looking for a book which would have the qualities of the original Webster's dictionary, by qualities, I mean spelling, definitions, and literary excellence in general? 1227

MR. HALE: The question is objected to unless Counsel will indicate what he means by the original Webster's Dictionary; that is whether he refers to the first dictionary published by Noah Webster many years ago or the standard current dictionary known in the market in recent years; the question being ambiguous. 1228

MR. CARROLL: Counsel refers to the 1847 edition of the unabridged Webster's Dictionary which as stated by the bill of complaint in this action was left at the time of the death of Noah Webster in 1843 in an advanced state of completion and

1229

Eduard J. McMahon—Re-direct.

was thereafter completed by William Webster and by Chauncey A. Goodrich, a son-in-law of said Webster.

1230 A. I was looking for a Webster's Dictionary. That would certainly contain the qualities of a Webster Dictionary. I would like to state further if I knew there had been any question of it being a Webster's Dictionary at the time I would not have purchased the book at all.

x Q. 37. What qualities do you require a Webster's Dictionary to have? A. To be published by a firm that always published the Webster's Dictionary, as I understand it.

x Q. 38. Do you understand the distinction between editing and publishing a dictionary? A. I think I do.

1231 x Q. 39. What is the distinction? A. An editor isn't necessarily a publisher, and vice versa.

x Q. 40. Is not an editor one who prepares a text while the publisher is the one who prints and issues the text? A. I so understand it.

x Q. 41. Is it more important in your mind that the contents, that is to say the text, spelling and definitions of a dictionary should be correct or that the printing should be expertly performed? A. I would want a combination of both.

1232 x Q. 42. When finding the title of Webster's Dictionary on a book does this mean to you any more than that the text and definitions are those which were made up by Noah Webster? A. It means that they have been brought up to date.

x Q. 43. Then the name Webster's Dictionary standing by itself, on a book means to you that the dictionary has been bought up to date? A. I don't know.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 44. I presume in purchasing a diction-

ary you desired to obtain a book whose contents were accurate and reliable as to spelling and definitions and for completeness of its list of words; is that correct? A. Yes, and for its good printing.

Re-D. Q. 45. Do you regard yourself as an expert on dictionaries and qualified to determine the intrinsic excellence of a book in the respects mentioned? A. I do not.

1234

Re-D. Q. 46. When you bought this particular book from the Brooklyn Times, did you expect it to be such a reliable and accurate book? A. I did.

Re-D. Q. 47. What led you to expect that? Its being advertised in the Brooklyn Times as a "Webster's Dictionary."

Re-D. Q. 48. I show you a book entitled "The Crown Dictionary," bearing the Copyright notice, Copyrighted 1904 by Louis Klopsch, New York" and ask you whether you intended to buy that book when you bought the Webster's New Standard Dictionary from the Brooklyn Times? A. I did not.

1235

MR. HALE: The book shown the witness is marked for identification, "Complainant's Exhibit A, referred to by H. W. Baker."

MR. CARROLL: I move that question and answer be stricken out, as incompetent, irrelevant and immaterial, and not binding on either defendant in this case, no foundation having been laid for it.

1236

MR. HALE: It is admitted in the answer that the dictionaries of the defendants are substantially identical with this book and printed from the same plates.

Re-D. Q. 49. Do you of your own knowledge

1237

Edward J. McMahon—Re-cross.

know whether or not the book you purchased from the Brooklyn Times is or is not a genuine Webster's Dictionary with the high reputation which you said Webster's dictionaries enjoyed in your mind? A. I do not know.

Re-D. Q. 50. Not knowing this fact, what did you believe at the time you purchased it? A. That it was a Webster's abridged dictionary.

1238

Re-D. Q. 51. Did you believe it to be abridged from the standard current Webster's unabridged dictionary or abridged from a Webster's unabridged dictionary published more than fifty years ago? A. I believed it was from the recent books.

RE-CROSS-EXAMINATION by Mr. Carroll:

Re-x Q. 52. As a matter of fact when you purchased this book did you have in mind the old, recent, or any particular edition of the unabridged dictionary as having been the fountain head from which this dictionary came? A. I thought I was buying a book up-to-date; a Webster's up-to-date.

1239

Re-x Q. 53. And if, irrespective of its past history, the court shall decide that the dictionary which you purchased is an up-to-date Webster's abridged dictionary, will you have any reason to be dissatisfied with your purchase?

MR. HALE: Objected to as incompetent and immaterial, because not calling for any fact, act or declaration and as purely hypothetical.

1240

A. Well, I will wait for the Court to decide that.

Re-x Q. 54. Do you mean to say that you will wait for the Court to decide whether you are satisfied or not?

MR. HALE: Objected to because it is immaterial whether the witness is or was sat-

Edward J. McMahon—Re-Re-direct.

1241

isfied with the book or not, the question being whether he obtained what he intended to buy.

MR. CARROLL: This witness has repeatedly testified that what he intended to purchase was a Webster's Dictionary, and counsel has been endeavoring to find out just what the witness had in his mind when he mentioned a Webster's Dictionary. It has further been alleged that witness was deceived by representations of defendant and the question is little more in substance than a question as to whether the witness would consider himself deceived if all the representations made by defendant are found by the Court to have been true. 1242

A. I certainly do.

Re-x Q. 54. Then if the Court decides that you are satisfied, you will accept that as final? A. I merely stated that I would wait to see what the Court decided, whether I had a Webster's dictionary or not. 1243

Re-x Q. 55. And if the Court decides that you did get Webster's dictionary, then you will be satisfied?

(MR. HALE: I make the same objection.)

A. Then I will have a Webster's dictionary, I said I was trying to buy a Webster's dictionary and if the Court decides I have got one, then I have got a Webster's dictionary. 1244

RE-RE-DIRECT EXAMINATION by Mr. Hale:

Re-Re-D. Q. 56. Do you know the history of Webster's Dictionary beginning with the first edition in the year 1806? A. No.

Re-Re-D. Q. 57. Did you ever hear of the edi-

1245

E. Louise Burlingham—Direct.

tions of 1806, 1828, 1840 and 1847, until the matter was broached in this suit? A. I did not.

DEPOSITION CLOSED.

Edward J. McMahon.

Subscribed and sworn to.

John A. Shields,

Standing Examiner.

1246

E. LOUISE BURLINGHAM, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Q. 1. Please state your name, residence and occupation? A. E. Louise Burlingham; residence, 78 West 94th Street; age, mature; occupation, bookkeeper for the American Law Book Company.

1247 Q. 2. Where were you educated? A. St. Paul, Minnesota.

Q. 3. In the Public Schools? A. Yes.

Q. 4. Have you heard of Webster's dictionaries in times past? A. Yes, frequently.

Q. 5. How long have you known of Webster's dictionaries? A. Ever since I went to school.

Q. 6. Did you use a Webster Dictionary at school? A. Yes.

1248 Q. 7. What is your understanding of the reputation and authority of Webster's Dictionary as a standard and reliable book of reference? A. It is the only one that I ever knew or ever considered.

Q. 8. Have you heard how it is generally regarded by the public and users generally?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

A. As far as I know, the way I feel about it.

Q. 9. Have you recently had occasion to pur-

chase a dictionary? A. Last April I purchased one.

Q. 10. Please state the circumstances under which you purchased that dictionary? A. The New York American offered a Webster's New Standard Dictionary for six coupons and eighty-nine cents, for which I purchased the book in question.

MR. CARROLL: On behalf of Cupples & Leon, I move this testimony and all testimony heretofore given about purchases made by witnesses of Webster's New Standard or Webster's New Illustrated Dictionary, as not binding on the defendant, and immaterial, irrelevant and incompetent. 1250

Q. 11. In making this purchase, what effect did your previous acquaintance and opinion have with you of Webster's Dictionary, in deciding to make this purchase? A. Why I considered it the reliable dictionary. 1251

Q. 12. Did you examine the book at or before the time you bought it? A. No.

Q. 13. You bought it then simply by its name? A. Yes.

Q. 13. What connection did you think there was between this book and the famous Webster's dictionary of which you previously heard? A. I thought it was the famous Webster's dictionary. 1252

Q. 14. Do you know even now except as you have been told whether the book you bought from the New York American is or is not the famous Webster's dictionary? A. No, I do not.

Q. 15. Do you know whether that book is or is not a genuine Webster's dictionary? A. No.

Q. 16. Do you know anything about the history of Webster's Dictionary from the beginning? A. Well, I only know what I was told the other day.

Q. 17. At the time you bought this book, did

1253

E. Louise Burlingham—Direct.

you know or had you ever heard of editions of Webster's dictionary published respectively in the years 1806, 1828, 1840 or 1847? A. No.

Q. 18. Your acquaintance with Webster's dictionaries is limited to books in use and on sale within what approximate period? A. Well, fifteen years back.

Q. 19. What was the name of the book which
1254 you bought from the New York American? A. Webster's New Standard Dictionary.

Q. 20. What priced book was it represented to be? A. Two dollars and a half.

Q. 21. Did you know whether or not there was in existence more than one series of Webster's dictionaries? A. What do you mean by "series"?

Q. 22. I mean, did you know whether there was more than one concern publishing dictionaries under the name Webster's dictionary? A. No.

Q. 23. I show you a book entitled "The Crown
1255 Dictionary" and marked for identification "Complainant's Exhibit A, Referred to by H. W. Baker", and ask you whether you intended to buy that book when you bought the book entitled Webster's New Standard Dictionary from the New York American?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

1256 A. No.

Q. 24. Have you ever seen or heard of that book before? A. No.

Q. 25. I suppose you wanted a dictionary in which the spelling and definitions were accurate and reliable and in which the list of words was fairly complete? A. Yes.

Q. 26. Do you regard yourself as an expert on dictionaries and qualified to determine whether any particular book is accurate, reliable and complete in these matters? A. No.

Q. 27. Upon what then did you rely as the assurance that this book was reliable and accurate and adequately complete? A. On the advertisement and the reputation Webster's dictionary had at the time that I was in school and using the book.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 28. Did the name "Webster" mean any more to you on this dictionary than that the spelling and definitions could be relied upon as correct and the list of words as complete as could be expected in an abridged dictionary? A. Certainly, I took it for the original Webster's dictionary. 1258

x Q. 29. What qualities were there in the original Webster's dictionary that you expected to find other than those that I have mentioned? A. I don't think so; I cannot see what other answer I can give. 1259

x Q. 30. I mentioned three qualities, accurate spelling and definitions, and a complete list of words, and asked you if you expected to find any other qualities in a Webster's dictionary? A. No, because I was buying a Webster's dictionary.

x Q. 31. The question at issue is, whether you got what you thought you were buying or not? If it shall be proved that the dictionary which you purchased is as a matter of fact based upon the unabridged dictionary of the English language of Noah Webster LL.D., revised and brought up to date in accordance with the most recent eminent English and American authorities, would you then be satisfied that the book which you purchased was what you expected to get? A. I don't know that I have that book. 1260

MR. CARROLL: I move to have the answer stricken out as not responsive and repeat my last question.

1261

E. Louise Burlingham—Cross.

MR. HALE: Objected to on the ground that the witness has testified that her knowledge of Webster's dictionary is limited to a period of the last fifteen years and she has nowhere shown to have any knowledge of Noah Webster's personal work.

1262

x Q. 31. (Repeated.) A. If it were proved that I really got what I thought I was buying, why then I would have to be satisfied, wouldn't I.

x Q. 32. That is not what I asked you? A. That is the way the question reads.

x Q. 32. What book did you expect to get other than a dictionary based upon the unabridged dictionary of the English language of Noah Webster LL. D. revised and brought up to date in accordance with the most recent eminent English and

1263

American authorities? A. I expected to get the Webster's Dictionary published by the original publishers of Webster's Dictionary.

x Q. 34. Why did you expect to get such a dictionary? A. Because I considered that dictionary the best dictionary published.

x Q. 35. What do you buy a dictionary for any way? A. To use.

x Q. 36. In what way? A. When I am in doubt about the spelling of any word.

1264

x Q. 37. Then if a dictionary has the correct spelling, it meets all your requirements? A. No, I should have said definitions also.

x Q. 38. Then if the book has the correct spelling and definitions, it meets your requirements? A. Yes.

x Q. 39. How did you happen to testify in this case? A. Mr. Brush, our auditor inquired of the bookkeepers whether any had purchased from the American one of the dictionaries that had been advertised, and some one of the young ladies in-

E. Louise Burlingham—Cross.

1265

formed him that I had and Mr. Brush asked me if I would see Mr. Hale; and I saw Mr. Hale and he asked me what I thought I was getting when I purchased this dictionary and I told him the original Webster's Dictionary, and Mr. Hale then asked me if I would be willing to sign an affidavit to that effect, and I answered yes.

x Q. 40. What relation has Mr. Hale to the company where you are employed? A. I know he is associated with the company. 1266

MR. HALE: I am now and have been for some five or six years general counsel for the American Law Book Company, but have no other connection with the company.

x Q. 41. Among the allegations in the bill of complaint is one that the first Webster's Dictionary was published in 1806; when you said to Mr. Hale that you thought you were purchasing the original Webster's Dictionary, did you mean that you thought you were purchasing a copy of that dictionary? A. No, I did not. 1267

x Q. 42. What did you mean? A. The latest revision of that publication.

x Q. 43. That is to say you thought you were getting the latest revision of the great work which was originally edited and compiled by Noah Webster? A. Yes.

x Q. 44. Are you acquainted with any of the old editions of this book? A. Not particularly. 1268

x Q. 45. If it be shown that the book which you had purchased is an up-to-date revision of the great work originally edited and compiled by Noah Webster, would you then be satisfied that the book which you purchased was the one which you expected to get?

MR. HALE: Objected to as having been fully answered in previous answers on cross-examination.

1269

E. Louise Burlingham—Re-direct.

A. Certainly if it is proved to be the Webster's Dictionary, then I am satisfied.

x Q. 46. Do you understand anything more by the term Webster's Dictionary than a dictionary based upon the unabridged dictionary of the English language of Noah Webster LL. D. revised and brought up to date in accordance with the most recent eminent English and American authorities?

1270

MR. HALE: Objected to as a repetition of a question already fully answered.

A. No.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 47. I show you a dictionary and its containing carton and ask you if that is the book which you purchased from the New York American and if that is the carton in which it came? A.

1271

Yes.

MR. HALE: The book and carton are offered in evidence and marked Complainant's Exhibit Miss Burlingham's Dictionary, and Complainant's Exhibit Miss Burlingham's Dictionary carton, JAS, EXR, February 19th, 1912."

Re-D. Q. 48. Did you buy this dictionary upon the good reputation of the Webster's Dictionary
1272 in current use in recent years or upon the reputation of the dictionary published more than fifty years ago? A. I bought it with the understanding that it was that original dictionary revised and brought up to date.

Re-D. Q. 49. Revised and brought up to date by whom,—by the same publishers as had been continuously revising and bringing it up to date or by a newcomer who has skipped over all editions

E. Louise Burlingham—Re-cross.

1273

published within fifty years and made his own revision or abridgment of the old book?

MR. CARROLL: Objected to as assuming a state of facts not proved and as unfairly stating the facts.

A. By the publishers who have continuously revised the book.

1274

RE-CROSS-EXAMINATION by Mr. Carroll:

Re-x Q. 50. When you purchased this book, did you think about the publisher at all? A. I took it for granted that the book that I was buying was the original Webster's Dictionary that I had in mind which I knew was published by Noah Webster's successors.

MR. CARROLL: I move the answer be stricken out as not responsive and repeat the question.

1275

Re-x Q. 50. (Repeated.)

MR. HALE: I object to the repetition of the question as fully and responsively answered.

A. My answer is just the same.

MR. CARROLL: This is a question which can be answered yes or no. I repeat the question.

1276

x Q. 51. (x Q. 50 repeated.)

MR. HALE: The question is objected to as having been fully, responsively and completely answered.

A. I wouldn't say no, because I actually took it for granted that this book was published by Noah

1277

Henry E. Hughes—Direct.

Webster or the successors to the Noah Webster estate.

DEPOSITION CLOSED.

E. Louise Burlingham.

Sworn to and subscribed:

John A. Shields,

Standing Examiner.

1278

Adjourned to to-morrow morning, February 20th, 1912, at 10 o'clock.

NEW YORK, February 20th, 1912.

Met pursuant to adjournment.

1279

Present—Counsel as before.

HENRY E. HUGHES, a witness called on behalf of the complainant and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1, Please state your name, age, residence and occupation? A. Henry E. Hughes; age, 49; residence, 1024 East 95th Street, Brooklyn; occupation, manufacturer.

Q. 2. Are you employed by the F. W. Seybel Company? A. I am.

Q. 3. How long have you known of Webster's Dictionary? A. Well, since my school days.

Q. 4. About when did you finish your school days? A. 1878.

Q. 5. Where were you educated? A. Brooklyn.

Q. 6. In the Public Schools? A. Partly; also in parochial school.

Q. 7. During the time of your acquaintance with Webster Dictionary, what has been your under-

1280

standing of its reputation and standing as an authoritative and reliable work of reference? A. My understanding was that it had been adopted by the United States Government as the authoritative work. That was my impression. It had always been my impression that Worcester had been adopted by Parliament as the standard of Great Britain, and Webster by Congress as the standard by this Government. Whether or not they have since been superseded by other dictionaries, I do not know. 1282

Q. 8. Are you acquainted with the history of Webster's Dictionary from the beginning, the first edition having been published in the year 1806? A. I knew that it was published in the early part of the last Century but never knew the exact year or date.

Q. 9. What period of time approximately comprises your knowledge and acquaintance of Webster's Dictionary? A. Thirty-five or forty years. 1283

Q. 10. Have you recently had occasion to purchase a dictionary? A. Not specially.

Q. 11. Did you in the early part of the year 1911 purchase a dictionary from the New York American? A. I purchased a dictionary through an advertisement that appeared in the New York American.

Q. 12. Please state fully the circumstances under which you purchased this dictionary and what led you to make the purchase. A. I saw an advertisement in the American advertising Webster's dictionary to be purchased for a price so small to my mind, it seemed nominal. The dictionary to be purchased for the price advertised and the coupons to be cut from the American. While I hadn't any idea to buy a dictionary at all, the temptation to purchase a Webster dictionary at so small a price led me to buy one. I sent a boy to an 1284

1285

Henry E. Hughes—Direct.

office I think somewhere on Fourth Avenue with the coupons cut from the American, with the price which I think was in the neighborhood of sixty-nine cents, I am not quite sure of the price; and he brought back the dictionary.

Q. 13. I show you a book entitled "Webster's New Standard Dictionary" which bears the copyright notice as follows: "Copyright, 1911 by Frank E. Wright," and ask if that is the identical book purchased by you? A. It is.

1286

MR. HALE: The book identified by the witness is offered in evidence and marked Complainant's Exhibit, Hughes Dictionary, JAS, EXR, February 20, 1912.

Q. 14. When you purchased this book, what book did you intend to buy and believe that you did buy? A. I believed that I was buying a genuine Webster's Dictionary.

1287

Q. 15. What connection did you suppose it had with the Webster's Dictionary with which you had previously been acquainted? A. I supposed it was identical, in a new form.

Q. 16. Did you know at that time that there were both abridged and unabridged editions of Webster's dictionary? A. I did.

Q. 17. You know of course that this was not the unabridged edition of Webster's Dictionary? A. I did.

1288

Q. 18. Of what book did you suppose it was an abridgment? A. Of the original Webster's dictionary.

Q. 19. And by the "original Webster's dictionary," do you mean the dictionary in current present day use or an abridgment of an early dictionary published more than fifty years ago? A. Well, I supposed it was the Webster's dictionary—any dictionary published under the name of

"Webster" must be the original but brought up to date.

Q. 20. Brought up to date by whom? A. Naturally, by the authorized successors of the original compiler; I had never heard of a Webster dictionary that was not authorized.

Q. 30. Did you know at this time, that there was more than one concern publishing dictionaries under the name of "Webster's" dictionary? 1290
A. I did not.

Q. 31. Do you know of your own knowledge and except as you have been since told whether or not this book purchased by you from the New York American is or is not a genuine Webster's dictionary? A. I do not.

Q. 32. Did you at the time of this purchase know the name of the publisher of the genuine Webster's dictionary? A. I did not.

Q. 33. What effect on your mind in making this purchase did the use of the name "Webster's" 1291
in the title of this dictionary have? A. That it was a guarantee that I was getting the best dictionary, as far as I knew.

Q. 34. Did you make any examination of the book at or before the time you bought it? A. I did not.

Q. 35. I show you a book entitled the "Crown Dictionary" which has been marked "Complainant's Exhibit A, referred to by H. W. Baker, for identification", and ask you if you knew you were 1292
buying that book when you bought this book from the New York American.

MR. CARROLL: Objected to as assuming a state of facts not proven.

A. I did not.

Q. 36. Did you intend to buy this book shown you and entitled "Crown Dictionary"? A. I did not.

Q. 37. Did you buy more than one copy of this dictionary from the New York American? A. I did.

Q. 38. What did you do with those copies? A. I gave one to Mr. F. W. Seybel; the other I took home; I would like to qualify that "gave"; I sold one to Mr. Seybel.

1294 Q. 39. Did you ever hear of the "Crown Dictionary" before it was called to your attention in this suit? A. I did not.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 40. When you purchased this book, did you think at all about the publisher? A. No, the name "Webster" was all that interested me.

1295 x Q. 41. And what did the name "Webster" mean to you on an abridged dictionary of this kind? A. It meant to me the highest authority in a dictionary.

x Q. 42. When you speak of a Webster's dictionary as being considered the highest authority, you mean of course one of the complete unabridged Webster's, do you not? A. Not necessarily. I supposed that an abridged Webster dictionary was simply a part of the unabridged.

1296 x Q. 43. Did I understand you correctly in answering Mr. Hale's question to say that you considered all current Webster's dictionaries as having sprung from one patriarchal edition compiled by Noah Webster? A. I believe that I said that any Webster dictionary was the same as the original Webster dictionary, but brought up to date.

x Q. 44. You spoke of the authorized successors of the original compiler in answering one of Mr. Hale's questions; will you tell me more precisely what you meant by that phrase? A. I meant somebody or persons who have acquired the

rights of the original compiler and his heirs by purchase or otherwise.

x Q. 45. What made you think that such rights could be so acquired? A. Why, the ordinary usages and customs that govern the transmission of any vested rights.

x Q. 46. What rights do you think can exist in the literary property of this kind?

MR. HALE: Objected to as irrelevant 1298
and immaterial; as calling for the opinion
of the witness on a question of law.

MR. CARROLL: The question is asked for
the purpose of finding out exactly what
was meant by the witness when he used
the phrase "authorized successors of the
original compiler", it being the impression
of Counsel that this witness has to a cer-
tain extent made his answers under a mis-
taken impression as to the law. 1299

MR. HALE: If the witness be mistaken
as to the law, which does not appear, it is
wholly immaterial as the question is what
the witness actually thought whether he
was right or wrong.

A. While I know in a general way that copy-
rights are limited, yet I have always been under
the impression, which may be wrong, that the use
of a personal name in any business could not be
used except by acquired authority. 1300

x Q. 47. In purchasing a dictionary are you
more interested in the editor or in the publisher?
A. To my mind, naturally in the editor.

x Q. 48. When you purchased this Webster's
dictionary, did you have in mind anything more
than a dictionary containing, as far as it went,
the spelling and definitions of the original un-
abridged Webster's, revised and brought up to

1301

Henry E. Hughes—Cross.

date? A. I did not give the spelling a thought; taking it for granted that I was purchasing a genuine Webster dictionary in which the spelling was bound to be correct and never having heard of a Webster Dictionary that was not genuine.

x Q. 49. Have you any reason to believe now that you did not purchase a genuine Webster dictionary? A. I have.

1302 x Q. 50. What reason? A. Information given to me by Mr. Hale.

x Q. 51. What information was that? A. The information that a firm styled Merriam & Company were the only authorized publishers and the information again conveyed to me by Mr. Hale during this examination that the dictionary which I purchased as a "Webster" dictionary was simply a reprint of a dictionary known as the "Crown Dictionary."

1303 x Q. 52. Do you know that the dictionary referred to by Mr. Hale as the "Crown Dictionary" is also a Webster's dictionary, although called by another name? A. I do not.

x Q. 53. If that be the fact, would the relation of the dictionary which you purchased to the Crown Dictionary as alleged by Mr. Hale, make any difference to your mind, as to your satisfaction with your purchase?

1304

MR. HALE: Objected to as irrelevant and immaterial, as the satisfaction of the witness with his purchase or the merits of the particular book is not the question; the question being one of identity, *i. e.* whether the witness got what he intended to get.

A. It would.

x Q. 54. How did you happen to testify in this case? A. I believe that Mr. Seybel with whom I am associated in business had his copy of the

look on his desk when Mr. Hale, who is Mr. Seybel's counsel, happened to notice it and asked Mr. Seybel how he happened to have it, and asked Mr. Seybel if he knew that he had a Webster dictionary that was not genuine in that copy. Mr. Seybel spoke to me about it, and told me that Mr. Hale would like to know if I was willing to make affidavit that I had purchased my copy under the impression that it was a genuine Webster dictionary; feeling that I had been imposed upon in the purchase, I readily agreed to make such an affidavit, and subsequently did make such an affidavit. 2200

x Q. 55. Are you connected with the Faidens Fibrous Tale Company? A. Only as a stock and bond holder.

MR. HALE: At request of opposing counsel, I state that I have no connection with the F. W. Seybel Company, except in times past I have attended to one or two small legal matters as attorney but which have been long since completely disposed of. 2207

x Q. 56. You have repeatedly used the expression "a genuine Webster dictionary," and have stated that you thought you were getting a genuine Webster's dictionary, and have further stated that you do not know of your own knowledge whether or not you did get a genuine Webster's dictionary; how are you ever going to determine whether or not you purchased the book which you thought you were purchasing? 2210

MR. HALE: Objected to as immaterial and because it is for the Court to say whether or not this book is a genuine Webster's dictionary and entitled to bear that name.

1309

Henry E. Hughes—Re-direct.

A. I have no way of judging, except by information that may be given me.

x Q. 57. You stated Mr. Hughes in the affidavit which you have made for the complainant in this action, subscribed and sworn to by you December 8th, 1911, that when you purchased this book, it occurred to you that possibly the book was a reprint of the genuine Webster's Dictionary upon
 1310 which the copyright had expired; did this thought which occurred to you, make you in any way hesitate in purchasing the book? A. No; because I thought that could be the only possible reason why the American could afford to sell a Webster dictionary so cheaply.

x Q. 58. It really made no difference to you whether you got a reprint or not, at that price? A. As long as it was published under the name of "Webster's."

1311 x Q. 59. You, of course, did not think that this was a reprint of the original unabridged Webster's dictionary to which you have referred? A. I don't believe I gave that a thought. I was wholly influenced by the name "Webster."

x Q. 60. Webster meaning to you a standard dictionary? A. Webster meaning to me a dictionary of the highest standard.

RE-DIRECT EXAMINATION by Mr. Hale:

1312 Re-D. Q. 60. Did anything occur to you with respect to some possible trade arrangement between the established publishers and the New York American or in regard to the coupon scheme as affording an explanation of the extremely low price at which a genuine Webster's Dictionary was offered; if so state it? A. Yes. It did occur

Harry Q. Pickett—Direct.

1313

to me that it was an advertisement scheme to increase the circulation of the American.

DEPOSITION CLOSED.

Henry E. Hughes.

Subscribed and sworn to:

John A. Shields,
Standing Examiner.

1314

HARRY Q. PICKETT, a witness called on behalf of the complainant and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your full name, age, residence and occupation? A. Harry Q. Pickett; age, 18; residence, 130 St. Felix Street, Brooklyn, N. Y.; occupation, clerk in the office of Judson & Hale, complainant's solicitors. 1315

Q. 2. On or about December 8th, 1911, do you remember calling Mr. Hale's attention to an advertisement of Webster's Dictionary then appearing in the New York American? A. I do.

Q. 3. What did Mr. Hale ask you to do then? A. Mr. Hale asked me to clip the coupons from the New York American and save them for three days; at the end of which time I was to purchase one or more of the dictionaries. 1316

Q. 4. And you did as requested? A. I did.

Q. 5. Do you remember the date when you purchased the dictionaries? A. December 9, 1911.

Q. 6. What instructions did Mr. Hale give you as to this purchase? A. I received no instructions from Mr. Hale.

Q. 7. Except simply to go to the New York American and purchase the dictionaries? A. Yes.

Q. 8. What did you do? A. I went to the man in charge of the dictionaries and told him I would

1317

Harry Q. Pickett—Direct.

like to purchase two of them, at the offices on Broadway and Park Place.

Q. 9. What passed between you and the man in charge of these dictionaries at that place? A. I asked the man if the dictionary was the genuine Webster Dictionary and he replied it is, and then added, "I suppose so."

1318 Q. 10. What else did he say if anything? A. He told me that he had sold over twenty thousand copies of this book.

Q. 11. Mr. Hale had previously told you that this book was not a genuine dictionary, had he not? A. Yes.

Q. 12. And you knew he was engaged in a law suit concerning it? A. Yes.

Q. 13. You do not claim to have been deceived by the New York American in this transaction? A. No.

1319 Q. 14. How did you come to ask the man whether or not it was a genuine Webster's Dictionary? A. Out of curiosity.

Q. 15. I show you two books and ask you whether these are the identical books which you purchased on that occasion and under the circumstances mentioned? A. They are the same books.

1320 MR. HALE: The books identified are offered in evidence and marked respectively, "Complainant's Exhibit, Harry Pickett's Dictionary, and "Complainant's Exhibit, Harry Pickett's Dictionary; flexible cover; JAS. EXR., February 20, 1912."

Q. 16. How much did you pay for each of these dictionaries? A. I paid ninety-eight cents for the flexible cover; and eighty-nine cents for the other. I am not positive, I think eighty-nine cents.

Q. 17. How many coupons did you give for these books? A. I gave three coupons of successive days for each book.

Q. 18. What did the man in charge say, if any-

Harry Q. Pickett—Cross.

1321

thing, about these coupons? A. He told me the coupons were not necessary.

Q. 19. Do you remember what you said to the man when you told him that you would like to purchase two of these dictionaries, did you call it by name? A. I did not.

MR. CARROLL: I move on behalf of both Syndicate Publishing Company and Cupples & Leon that the whole of this deposition 1322 be stricken out as incompetent, irrelevant and immaterial, and not within the issues framed, and on behalf of Cupples & Leon on the further ground that it is immaterial in view of the fact that the two dictionaries alleged to have been purchased were not published by the defendant Cupples & Leon.

CROSS-EXAMINATION by Mr. Carroll:

1323

x Q. 20. In your affidavit you stated that you asked whether the dictionary was an "original Webster's Dictionary." In answer to Mr. Hale's question you stated that you asked the clerk in the office of the American whether or not it was a "genuine Webster's Dictionary," do you remember now which of these two phrases you used? A. I don't exactly remember.

RE-DIRECT EXAMINATION by Mr. Hale:

1324

Re-D. Q. 21. By "original Webster's Dictionary" and "genuine Webster's Dictionary" do you mean the same thing? A. I do.

DEPOSITION CLOSED.

Harry Q. Pickett.

Subscribed and sworn to:

John A. Shields,
Standing Examiner.

1325

Henry H. Van Dyck—Direct.

HENRY H. VAN DYCK, a witness called on behalf of the complainant and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Henry H. Van Dyck; age, 43; residence, 63 Clarkson Street Brooklyn, New York; occupation, practising attorney, State of New York; 189 Montague Street, Brooklyn.

1326

Q. 2. Where were you educated, Mr. Van Dyck? A. In the Public School of New Brunswick, New Jersey, and by private tutors.

1327

Q. 3. Were you at any time an editor engaged in the preparation of the American and English Encyclopaedia of Law or other books? A. I was. From 1896 to 1909 I was a member of the editorial staff of the Edward Thompson Company, at Northport, N. Y., during most of which time I was engaged largely in editing legal articles for the American and English Encyclopaedia at Law and other works published by that Company.

Q. 4. Prior to becoming legal editor for the Edward Thompson Company, did you follow the profession of proof reader? A. I did.

1328

Q. 5. For what concerns or publications have you acted as proof reader? A. For the Funk & Wagnalls Company, New York City as head proof reader on the Standard Dictionary during the entire time of the setting of type on that work; for the Lockwood Press, as head proof reader, publishers at that time of the Musical Courier, Paper Trade Journal and other works. I think Paper Trade Journal was the correct title. And for about a year on the New York Sun. During the three or four years of my connection with the Edward Thompson Company I also did a good deal of proof reading on the Encyclopædia of Law and other works published by that firm, and from time to time during perhaps the most of my

connection with that firm, I did some proof reading on these works.

Q. 6. In the course of your business as an editor, as a proof reader, and in your literary labors generally, have you had occasion to become familiar with the principal dictionaries of the English language used in this country? A. I have.

Q. 7. Please name the principal standard dictionaries of the English language in general use in this country during the period of your acquaintance with such matters? A. The Standard Dictionary, above referred to; Webster's International Dictionary; The Century Dictionary; Webster's Unabridged Dictionary; and Worcester's Dictionary are the principal ones. 1330

Q. 8. Have each of these dictionaries a recognized standing and authority as reliable reference works? A. They have.

Q. 9. How have they acquired such standing and reputation? I mean, how does any dictionary acquire reputation and authority? A. By means of the reputation of the men who compiled it, by standing successfully the test of use, and by the consensus of opinion of literary and educated persons. 1331

Q. 10. When the authority of one of the recognized dictionaries which you have referred to was invoked in support of a spelling or definition, how is that authority invoked? A. By referring to the particular dictionary by name. 1332

Q. 11. When a dictionary is referred to or cited as an authority by the name "Webster's Dictionary," do you and other members of the professions which you have followed, understand what book is meant? A. Yes, we understand that either Webster's Unabridged or Webster's International Dictionary is referred to. At the present time, the reference would be assumed to be the Webster's International Dictionary.

1333

Henry H. Van Dyck—Direct.

Q. 12. If the reference were made some years ago and before the publication of the International in 1890, what book would be understood as referred to by the name "Webster's Dictionary?"
A. Webster's Unabridged.

Q. 13. There have been various editions of Webster's Unabridged Dictionary in the following years, respectively: 1828, 1840, 1847, 1864, 1890,—
1334 which was the Webster's International Edition, and 1909, which is the Webster's New International Edition; which one of these editions do you refer to when you speak of "Webster's Unabridged Dictionary"? (My question being limited to usage within the period of your acquaintance with Webster's Dictionary.) A. To the edition published in 1864 and in common use for a good many years prior to the time when it was practically superseded by
1335 Webster's International.

Q. 14. What has been the standing and reputation during all the period of your acquaintance with it? A. Very high.

Q. 15. Do you know who has been the publisher of the Webster's dictionaries to which you have referred in your previous answers? A. The Merriams of Springfield, Mass., I think.

Q. 16. State if you know, upon what editions of Webster's Dictionary the present standing and
1336 reputation of Webster's Dictionary as an authority rests?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial and calling for a conclusion of this witness.

A. Do you mean the standing and reputation of the dictionary among people of the present generation, say people of my own age, and thereabouts?

Q. 17. That is it precisely. A. Webster's unabridged published in 1864 or thereabouts and Webster's International published in 1890, together of course, with the New International very recently published. I should say, however, that the reputation of the New International is due to and founded on the high reputation of its immediate predecessors.

Q. 18. In the course of your professional labors 1338
as a lawyer, and your labors as a legal editor, have you had occasion to observe the manner in which the Courts usually refer to Webster's Dictionary as an authority, and if so, state what it is? A. I have had occasion to so observe many times. The usual form of citation in judicial opinions is "Webster's Dict." or frequently "Webst. Dict." or simply "Webster."

Q. 19. What book do you understand and do 1339
men in your profession understand to be referred to by these various forms of citation?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, and calling for the opinion of the witness which he is not qualified to make.

Q. 19 (continuing). I include proofreaders, legal editors, and lawyers as being within your experience.

MR. CARROLL: I object further on the 1340
ground that this question is outside the issues in the case, the principal issue being the meaning connected with the name "Webster's Dictionary" in the mind of the general public, rather than the meaning given to that name by a special or particular class of the public, and on the ground that this witness has not been qualified as an expert to testify as to the meaning at-

1341

Henry H. Van Dyck—Direct.

tached to the meaning of the words "Webster's Dictionary" in the minds of the general public.

1342

A. If the citation is a comparatively recent one, say since 1892, or thereabouts, it is understood to refer to Webster's International Dictionary; if prior to that time and during the seventies and eighties it is understood to refer to Webster's Unabridged published about 1864; a very recent citation, say within the last two years or so, in the opinion of any of our leading courts might refer to the New International, or to the International of the edition of 1890. In saying this, I am governed largely by my experience in compiling, editing and proofreading definitions in the course of my work on the American and English Encyclopædia of Law, in which work I have had very frequent occasions to verify quotations and citations from Webster's Dictionary, the Century Dictionary, and the Standard Dictionary occurring in judicial opinions.

1343

Q. 20. In the American and English Encyclopædia of Law to which I have referred, is there any department in which dictionaries are frequently cited as authority? A. Yes.

Q. 21. That is the department dealing with words and phrases, is it not? A. Yes.

1344

Q. 22. In that department, when it is intended to invoke the authority of Webster's Dictionary as distinguished from the authority of the Standard, the Century or Worcester's Dictionary, what form of citation was used? A. "Webster's Dict." or "Webst. Dict."

Q. 23. What book is specifically intended by that form of citation? A. Do you mean as cited by the editor or legal writer as distinguished from a citation of a dictionary taken from a judicial opinion?

Henry H. Van Dyck—Direct.

1345

Q. 24. The answers you have already given will cover the instances where the citation is quoted from a judicial opinion, will it not? A. Yes.

Q. 25. Then you may please limit your answer to what book was intended to be referred to when the editor himself used that form of citation. A. Webster's International Dictionary, edition of 1890, which is the Webster used in the editorial room of the Edward Thompson Company and is always referred to as "Webster" or "Webster's Dictionary." 1346

Q. 26. You have stated that Webster's Dictionary is one of the standard authorities among men in your several professions; from your experience in this matter, would a new dictionary, founded upon the 1847 edition of Webster, upon which the copyright had expired, and passing over the subsequent successive editions thereof, such as the Unabridged edition of 1864 and the International edition of 1890, and prepared by new editors and publishers in no way connected with the concern which has continuously published Webster's Dictionary since prior to 1847 and which published the successive editions referred to, have the authority and be the book which is today understood to be intended by a reference to Webster's Dictionary made today? 1347

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of this witness which he has not been qualified to make. 1348

A. It would not.

Q. 27. All of the Webster's dictionaries to which you have referred have been those published by the Merriam Company of Springfield, is that correct? A. That is correct.

1349

Henry H. Van Dyck—Cross.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 28. Do you know of any other Webster's dictionaries published by any other house? A. I know that a few years ago a dictionary under the name of "Webster's" or containing the name "Webster" was put on the market by the Ogilvie and I believe that I have either seen or heard of dictionaries bearing the name "Webster" put on the market with the imprint of other firms than the Merriams.

1350

x Q. 29. Do you know the name of these other publishers or the dictionaries which they published? A. I do not remember particularly any firm, except the Ogilvies, nor do I remember the title of any of these various dictionaries.

x Q. 30. Would you cite any one of the abridged Webster's dictionaries, whether published by the Syndicate Publishing Company or by Couples & Leon, or by the G. & C. Merriam Company or by any other publisher as an authority? A. I would not if I could help it cite any abridged dictionary at all; I would regard an abridged Webster published by the Merriams as authoritative, so far as it went and would cite it as an abridgment, but would not give to it the same weight that I would to the unabridged Webster's.

1351

x Q. 31. I show you Complainant's Exhibit Edward J. McMahon's Dictionary" and ask you to examine it.

1352

(Witness examines)

From your examination of that dictionary, do you believe that it is published by the same publishers as those who published the Webster's New International, Webster's International or Webster's Unabridged?

MR. HALE: Objected to as immaterial because the witness has already testified to

Henry H. Van Dyck—Re-direct.

1353

special familiarity with Webster's dictionary and its publisher.

MR. CARROLL: The question is asked for the purpose of showing that the witness and people in the same class as himself could in no way be deceived by this dictionary.

MR. HALE: The test of unfair competition and deceptive similarity is the ordinary and average purchaser of the class of goods in question and not whether persons specially familiar with the goods would be deceived. 1354

A. I do not.

x Q. 32. Is there anything about that dictionary which would lead you to so believe? A. Nothing that would lead me personally to so believe.

RE-DIRECT EXAMINATION BY MR. HALE:

1355

Re-D. Q. 33. What is there about this dictionary shown you that in view of your familiarity with Webster's dictionary would prevent you from believing that this dictionary is published by the same publishers as publish Webster's International Dictionary and the other standard Webster Dictionaries to which you have referred?

A. The title page of this book bears the imprint of Syndicate Publishing Company which I know is not the publisher of the Webster's dictionaries to which I have referred, that is one thing, and that in itself is enough to show me that it is not published by the publishers of the Webster Dictionaries to which I have referred. 1356

Re-D. Q. 34. You testified in the case of G. & C. Merriam Company against Ogilvie some years ago, did you not, in a suit involving the dictionary published by Ogilvie?

1357

Charles J. Timms—Direct.

MR. CARROLL: Objected to as improper re-direct.

A. I did.

Re-D. Q. 35. And was it in that litigation that you first heard of Ogilvie and his dictionary? A. I cannot remember now whether I first heard of it in that suit or not.

1358

Re-D. Q. 36. Has the dictionary published by Ogilvie become the standard authoritative Webster's Dictionary known and referred to by that name to-day.

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial and not within the issues of this case.

A. It certainly has not.

1359

DEPOSITION CLOSED.

Henry H. Van Dyck.

Subscribed and sworn to:

John A. Shields,

Standing Examiner.

1360

CHARLES J. TIMMS, a witness called on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Charles J. Timms; 45 years; 731 Hancock Street, Brooklyn; occupation, accountant.

Q. 2. Have you ever heard of Webster's Dictionary? A. I have.

Q. 3. How long have you been since or how acquainted with them? A. About twenty-five years.

Q. 4. During that time, what has been your understanding of the authority and reputation of Webster's Dictionary as a work of reference? A. Well, I always understood that Webster's Dictionary was the reliable dictionary.

Q. 5. Have you known of this work as being used in the schools? A. I know it is used, certainly, in schools.

Q. 6. Do you remember whether you used it when you were at school? A. I don't recall it.

Q. 7. Have you recently had occasion to purchase a dictionary? A. Well, about the spring of last year I noticed an advertisement in the New York Journal stating that they gave a Webster's Dictionary for anyone and I believe some different prices; I clipped the coupon and went to their store on Jefferson Street in Brooklyn and they showed me three coupons at different prices. I selected one, for which I paid, I think eighty-nine cents. This book was in a paper box and marked \$2.50, called, if I remember correctly, Webster's Standard Dictionary.

Q. 8. I show you a dictionary entitled Webster's New Standard Dictionary and bearing a single copyright notice of the year 1881, and also the containing box or carton and ask you if that was the identical book you purchased and the carton in which it came? A. Yes, that is the book and the carton.

Mr. Mead: The dictionary and carton identified by the witness are offered in evidence and marked respectively "Complaint of C. J. Timms' Dictionary" and "Complaint of Exhibit, C. J. Timms' Dictionary carton," Dec. Dec. February 20th, 1912.

1365

Charles J. Timms—Direct.

Q. 9. What was there about the advertisement in the New York American, or Journal I believe you called it, which specially attracted you to this purchase? A. The name "Webster."

Q. 10. In what way was the Webster's Dictionary attractive to you? A. Well, I considered the name "Webster" as being the best book published in the way of a dictionary and I wanted a
1366 book for the use of my boy and that is the reason I selected that one, and especially because it seemed to be sold at such a low price.

Q. 11. When you bought this book, what book did you intend to buy and think that you did buy? A. The Webster's Dictionary.

Q. 12. What connection did you think there was between the book you bought and the Webster's Dictionary which you had previously known and which you say you considered the best dictionary?
1367 A. Well, I thought it was the real Webster's Dictionary brought right up to date.

Q. 13. Did you know that there were any dictionaries in the market bearing the name Webster's Dictionary which were not published by the established publishers of the dictionary which you had previously known?

MR. CARROLL: Objected to on the ground that this witness has not testified that there was any established firm of publishers which he had in mind in connection with Webster's Dictionary.
1368

A. Well, I can only answer that by saying that I only knew of one dictionary as Webster's.

Q. 14. Are you an expert on dictionaries? A. I am not.

Q. 15. Did you examine the dictionary before you bought it to see whether it was worth buying? A. No.

Q. 16. What induced you to think that it was worth buying? A. From the advertisements.

Q. 17. And what was there in the advertisement that made you think this book was worth buying? A. Well, the way that the advertisement read stating that it was a Webster dictionary and as I remember it stating that it gave definitions of certain words that were not in other dictionaries.

1370

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 18. What did you think you were getting when you bought this book, Mr. Timms? A. A Webster dictionary.

x Q. 19. Have you any reason to believe that you did not get a Webster's dictionary? A. Not of my personal knowledge.

x Q. 20. Have you any reason of any kind? A. Only from information that was given to me.

x Q. 21. What information was that and how 1371
was it given to you? A. Well, I was talking with Mr. Hale one day about dictionaries and he was speaking about the advertisement in the papers and he asked me if I heard of anybody that had purchased one, and I said that I had; he then informed me that this was not the genuine Webster's dictionary, and he would be pleased to exchange this one for a genuine one. As long as I got the right dictionary, it was immaterial to me.

MR. CARROLL: I move to have that 1372
stricken out as not responsive.

x Q. 22. What do you mean by a Webster's dictionary? That is, what does the term "Webster's dictionary" mean to you? A. The correct spelling and definitions of words.

x Q. 23. Does the name suggest in your mind any one particular publishing house? A. I never heard of any of the publishers of the dictionary;

I never knew who the publishers of the Webster dictionary was.

x Q. 24. And when you purchased this book you were not looking for a book published by any particular publishing house but rather for a book which should contain correct spelling and definitions? A. Yes, I was looking for a Webster's dictionary.

1374 x Q. 25. Am I correct in assuming from your last answer that to you the term Webster's dictionary means nothing more than a dictionary containing accurate and correct spelling and definitions? A. Well, I considered the Webster's dictionary the one giving the correct spelling and definitions.

x Q. 26. So long as the dictionary which you purchased contained the correct spelling and definitions, did it make any difference to you by whom it was published? A. I can only answer that as before, that I only knew that there was one Webster's dictionary.

1375 x Q. 27. The publisher then makes no difference in your mind. A. I thought there was only one publisher.

x Q. 28. When you bought the book, did you think about the publisher at all? A. No, sir.

x Q. 29. Now that you have been informed that there are Webster's dictionaries published by a number of different publishing houses, can you state whether or not in purchasing a dictionary of this kind, you would be interested in the house by which it had been published.

1376

MR. HALE: I object as irrelevant and immaterial and because it asks the witness to guess what he would do under certain circumstances which did not exist when he made this purchase. Complainant is not bound by a mere guess as to what the wit-

Charles J. Timms—Cross.

1377

ness would or would not do in the light of his present information.

MR. CARROLL: Question withdrawn.

DEPOSITION CLOSED.

Charles J. Timms.

Subscribed and sworn to:

John A. Shields,

1378

Standing Examiner.

Adjourned to tomorrow, February 21st, 1911, at 1 o'clock.

NEW YORK, February 21, 1911.

Met pursuant to adjournment.

1379

Present: Counsel as before.

MR. HALE: Complainant exhibits to Defendants Counsel a certified copy of the certificate of incorporation of the complaint, and thereupon it is stipulated for the purpose of this case that complainant is a corporation duly incorporated under the laws of the State of Massachusetts as alleged in the bill of complaint herein.

Pending the taking of depositions in Springfield, Mass., of which notice has been given, and of depositions in Buffalo, New York, of which formal notice will be given to-day, the further taking of depositions in New York City before Standing Examiner Shields is adjourned to be resumed on one day's notice, but not before March 1st, 1912.

1380

1381 DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

	G. & C. MERRIAM COMPANY, Complainant,	
	vs.	Equity 8-161.
1382	COUPLES & LEON COMPANY, Defendant.	
	G. & C. MERRIAM COMPANY, Complainant,	
	vs.	Equity 8-162.
1383	SYNDICATE PUBLISHING COMPANY, Defendant.	

NEW YORK, March 6th, 1912.

Testimony taken on behalf of the complainant,
for final hearing, pursuant to notice annexed, be-
fore John A. Shields, Esq., a Standing Examiner
of this Court, pursuant to the 67th Rule in Equity,
as amended, at the offices of Messrs. Judson &
Hale, 40 Wall Street, Borough of Manhattan, New
York, at 2 P. M.

APPEARANCES.

THE EXAMINER.

WILLIAM B. HALE, Esq.,
For Complainant.

LAUREN CARROLL, Esq.,
Of Counsel for Defendants.

John Paul Catharine—Direct.

1385

JOHN PAUL CATHARINE, a witness called on behalf of the complainant being duly sworn, testifies as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1 Please state your name, age, residence and occupation? A. John Paul Catharine; age, 45; 398 McDonough Street, Brooklyn; Occupation, Clerk, American Cotton Oil Company, 27 Beaver Street. 1386

Q. 2. Have you known of Webster's dictionaries in times past? A. Yes; I have known of them ever since I was a schoolboy.

Q. 2. What has been your understanding of the reputation and merits of Webster's Dictionary as a work of reference during this time? A. It was always my understanding that it was standard authority.

Q. 3. Where did you go to school? A. Philadelphia. 1387

Q. 4. Did you attend the public schools? A. Yes, sir.

Q. 5. Have you recently had occasion to purchase a dictionary? A. Yes, sir.

Q. 6. What book did you purchase and what were the circumstances attending the purchase? A. I purchased a Webster's New Standard Dictionary from the New York American.

Q. 7. How did you come to make this purchase? A. I saw it advertised in that paper and by the payment of eighty-nine cents with a certain number of coupons. 1388

Q. 8. About when was this? A. In April, 1911.

Q. 9. What was there about the advertisements that attracted you to make this purchase? A. I saw an opportunity of procuring an up-to-date Webster's Dictionary at a cheap price.

Q. 10. Did you examine the dictionary at or before the time you bought it? A. No, sir.

1389

John Paul Catharine—Direct.

Q. 11. Upon what did you rely as an assurance that it was a good and accurate book worth buying? A. I relied on the name of "Webster's" Dictionary.

Q. 12. Did you know at that time the name of the publisher of the Webster's Dictionary of which you had previously known and which you say you regarded as a standard authority? A. No, sir.

1390 Q. 13. Did you know at that time whether there was more than one concern issuing dictionaries under the name of "Webster's" dictionaries? A. No, sir.

Q. 14. At that time had you ever heard of a dictionary entitled the "Crown" Dictionary? A. No, sir.

Q. 15. You have referred to Webster's Dictionary as a standard authority, did you know that there were both abridged and unabridged Webster's Dictionaries? A. No.

1391 Q. 16. (Q. 15 repeated) . A. Oh, yes, I knew that.

Q. 17. When you bought this book from the New York American, I presume you did not expect to get the large or unabridged edition of Webster's Dictionary? A. No. If I am not mistaken, I think they printed the size in the paper.

1392 Q. 18. I show you a book entitled "Webster's" New Standard Dictionary, bearing a single copyright notice of the year 1911, and ask whether that is the identical book which you purchased from the New York American? A. Yes, sir.

MR. HALE: The book is offered in evidence and marked, "Complainant's Exhibit, John Catharine's Dictionary, JAS Exr, March 6th, 1912."

Q. 19. Do you know whether or not the book which you bought is a genuine Webster's Dictionary? A. No, sir.

Q. 20. Did you find the book completely satisfactory in use? A. I was somewhat disappointed in the book, as I found many words that I was anxious to learn the definitions of were not there; for example, on the first page they print that it is based upon the unabridged dictionary, and upon looking for the definition of the word "unabridged" I fail to find it in this book. Another very common word I fail to find there is "inopportune"; there were many others that I don't recall. 1394

Q. 21. Did the low price at which this book was offered and sold arouse any doubts in your mind as to whether it was a genuine Webster's dictionary? A. No, I didn't give the subject any thought.

Q. 22. Did the fact that it was offered by a newspaper in connection with a coupon scheme have any effect upon your mind? A. Yes, it did. I thought that the New York American with their opportunities were giving us a bargain. 1395.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 23. You state in answer to one of Mr. Hale's questions that you did not know whether or not the book which you purchased was a genuine Webster's dictionary; have you any reason to believe that it is not? A. I have not.

x Q. 24. What does the term "Webster's Dictionary" mean to you? A. The term "Webster's Dictionary" means to me the standard work of which I have always known. 1396.

x Q. 25. Is it connected in your mind with any particular publisher? A. No, sir.

x Q. 26. Did you at the time you purchased this book think about the publisher at all? A. No, sir

x Q. 27. Doesn't the name "Webster" in the title of a dictionary mean to you simply a text

1397

John Paul Catharine—Re-direct.

prepared by Webster? A. By "text," do you mean "book".

x Q. 28. By "text" I mean the contents of a book? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. HALE:

Re-D. Q. 29. Do you know whether or not Noah Webster is dead? A. Yes, sir.

1398

Re-D. Q. 30. When you bought this dictionary, did you expect to get a dictionary written by Noah Webster himself? A. Yes, sir.

Re-D. Q. 31. How then did you expect to receive an up-to-date dictionary?

MR. CARROLL: Objected to an not proper re-direct, and as being an effort to cross examine his own witness, and to disprove his witness's own statements.

1399

A. My answer to that is that I expected to receive Webster's up-to-date dictionary.

Re-D. Q. 32. Did you buy upon the reputation of the present day standard Webster's dictionaries, or upon the reputation of a book more than forty years old? A. I make the same answer.

DEPOSITION CLOSED.

John Catharine.

1400 Subscribed and sworn to:

John A. Shields,
Standing Examiner.

Richard W. Geldart—Direct.

1401

RICHARD W. GELDART, a witness called on behalf of the complainant, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Richard W. Geldart, age 53; residence, 133 Prospect Park, West, Brooklyn; occupation, exporter.

Q. 2. How long have you known of Webster's Dictionary? A. Well, practically all my life. 1402

Q. 3. And what has been your understanding of the reputation and merits of Webster's Dictionary as a work of reference? A. As being one of the best.

Q. 4. Have you recently had occasion to purchase a dictionary? A. I have.

Q. 5. What book did you purchase and from whom? A. A Webster dictionary from the Brooklyn office of the New York American.

Q. 6. I show you a book and ask you if that is the identical book which you so purchased? A. Yes, sir. 1403

MR. HALE: The book identified is offered in evidence and marked "Complainant's Exhibit R. W. Geldart's Dictionary, Jas, exr., March 6th, 1912."

Q. 7. What attracted you to make this purchase? A. Its cheapness.

Q. 8. Cheapness is a relative term; was there anything else that attracted you? A. As it was a question of saving coupons including a certain amount of cash, I thought it was an advertising scheme to sell goods cheap. 1404

Q. 9. Did you examine the book at or before you bought it? A. I did not.

Q. 10. Upon what did you rely as an assurance that it was worth buying? A. The fact that I did

1405

Richard W. Geldart—Cross.

not have a dictionary at the house and its cheapness.

Q. 11. What connection did you think that there was between this book and the Webster's Dictionary of which you had previously known and which you regard as one of the best? A. I thought it was one and the same thing.

Q. 12. Have you ever heard of a dictionary entitled the "Crown" Dictionary? A. I have not.

Q. 13. Did the good reputation which Webster's dictionaries had in your mind have anything to do with making you think this book was cheap at the price? A. Certainly.

Q. 14. At that time did you know the name of the publisher of the standard Webster's dictionaries which you say you have known practically all your life? A. No.

Q. 15. About when did you purchase this book from the New York American? A. I should say about twelve months ago.

Q. 16. Do you know whether or not the book you bought is a genuine Webster's dictionary? A. Impossible to say.

Q. 17. What did you expect it to be in that regard? A. I expected the unabridged edition of Webster's dictionary.

CROSS-EXAMINATION BY MR. CARROLL:

1408 x Q. 18. Is the term "Webster's dictionary" connected in your mind with any particular publisher? A. I cannot say that it is.

x Q. 19. When you purchased his book did you think about the publisher at all? A. I did not.

x Q. 20. Does the name of "Webster" in a dictionary indicate anything more to you than that the contents of that dictionary were originally prepared by some author known as Webster and are to be considered reliable contents? A. I an-

Richard W. Geldart—Re-direct.

1409

ticipated that I was buying a dictionary by Noah Webster.

x Q. 21. Have you any reason to believe that you did not get a dictionary by Noah Webster? A. I cannot say that I have.

x Q. 22. Has Mr. Hale made any statements to you about the genuineness of this dictionary? A. Not particularly. I might add that having seen a Webster's unabridged dictionary, I found this 1410 a little smaller in size.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 23. Did you expect the book to be the one which is in current present day use or an old book first published more than forty-two years ago? A. I expected an up-to-date one.

Re-D. Q. 24. And did you buy upon the reputation of the present day Webster's dictionaries, or the reputation of a book first published more than 1411 forty-two years ago? A. I thought I was buying an up-to-date book.

DEPOSITION CLOSED.

Richard W. Geldart.

Subscribed and sworn to:

John A. Shields,

Standing Examiner.

1412

Adjourned to 2 o'clock, Thursday, March 7th, 1912.

1413

Ida B. Smack—Direct.

New York, March 9, 1912.

Met pursuant to agreement.

Present.—Counsel as before.

Ida B. Smack, a witness called on behalf of the complainant, being duly sworn, testified as follows:

1414

DIRECT EXAMINATION BY MR. HARR:

Q. 1. Please state your name, age, residence and occupation? A. Ida B. Smack; age, nineteen, residence, 271 South Fifth Street, Brooklyn; occupation stenographer.

Q. 2. Have you known of Webster's dictionary more or less in times past? A. Well, I have for a number of years, yes.

1415

Q. 3. For about how long? A. Well, since school days, quite a few years; and in business also for the last twelve years.

Q. 4. In what way have you known of it? A. As I say, using it in business.

Q. 5. Did you also use it in school? A. Yes.

Q. 6. Where did you go to school? A. Public School 19, Brooklyn.

Q. 7. During all this period what has been your understanding of the reputation and authority of Webster's Dictionary as a book of reference? A.

1416

Why I have always understood it was the only book to use.

Q. 8. Have you recently had occasion to purchase a dictionary? A. Why, the one I bought with coupons from the New York American.

Q. 9. About when did you make this purchase? A. Well, I guess it must be about a year ago.

Q. 10. It was some time in the spring of 1911 then? A. Yes, I think it was.

Q. 11. What book did you intend to buy from

the New York Tribune and think that you did buy? A. The said Webster's Dictionary.

Q. 12. How did you come to make this purchase? A. Why I saw it advertised in the paper and I knew of several others who also bought it in the same way.

Q. 13. What connection did you think there was between this book which you saw advertised and which you bought and the Webster's Dictionary which stood so high in your mind? A. Why, I thought it was one and the same thing.

Q. 14. At that time did you know the name of the publisher of the Webster's Dictionary which you had previously regarded as the high authority? A. No, I really did not.

Q. 15. Did you examine this book at or before the time you bought it? A. Why I know at the time I bought it, I noticed several things in it, that is, the pages were missing and there were several words I could not find.

Q. 16. When was this before or after you bought the book? A. Before I bought the book, and I saw it back cover.

Q. 17. Before buying the book did you examine it? A. No, I did not.

Q. 18. Upon what did you rely as an evidence that the book was a dictionary worth buying? A. Well, I supposed the name was all that was necessary.

Q. 19. What name do you mean? A. "Webster's."

Q. 20. Did you know at the time of buying this book that more than one person was publishing dictionaries using the name "Webster" as the title? A. No, I did not.

Q. 21. Until told differently what did you know or believe as that subject? A. Well, I didn't know until my brother-in-law mentioned it to me.

1421

Ida B. Smack—Cross.

Q. 22. Do you remember the full title of the book which you bought from the New York American? A. No, I do not.

Q. 23. Did you deliver up the book which you bought to be filed with the affidavit which you verified on December 30, 1911, offered in support of the motion for injunction in this case? A. Yes.

1422

It is stipulated that the dictionary which this witness purchased and has referred to, and which is now on file upon the motion for preliminary injunction herein, shall be considered in evidence without further marking, subject to objections on the part of Cupples & Leon that said dictionary is irrelevant and immaterial.

1423

Mr. Carroll: I also make an objection here to all of the testimony of this witness, and move on behalf of Cupples & Leon that said deposition be stricken out, as incompetent, irrelevant and immaterial.

Q. 24. What effect in making this purchase did the good reputation of Webster's Dictionary have? A. Well, I know I was sadly disappointed that I didn't get the real book.

1424

Q. 25. What I mean is, what part did the good reputation of Webster's dictionary and your previous acquaintance with it, have to do in causing you to make this purchase from the American? A. Well, I always felt that you could rely on Webster's Dictionary, but when I found out I didn't have the real book, I lost all confidence in it.

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 26. You said that there were some pages missing? A. Several pages.

x Q. 27. Do you remember what pages those

were in the book that you purchased? A. No, I do not; I know there were some missing and several pages loose in the book.

x Q. 28. You said that you sent the book back? A. Twice.

x Q. 29. To whom did you send it? A. Why I guess direct to the American, the office boy took it over.

x Q. 30. Did you direct the office boy to point out the mistakes? A. Yes. 1426

x Q. 31. Did the American give you a new book? A. Yes, sent another one back, but I returned that also.

x Q. 32. Why did you return that? A. Well, there were two or three pages loose in that book also.

x Q. 33. Is the book which is filed in this case also incomplete? A. That I couldn't say, I never bothered to look at it. 1427

x Q. 34. Do you know whether or not the book which you finally kept and which is filed with your affidavit is what you call a real Webster's Dictionary? A. I know it is not now.

x Q. 35. How do you know it is not? A. Well, I have since found out.

x Q. 36. What have you found out? A. Well, I have shown the book I have now to people who know.

x Q. 37. To whom have you shown it? A. Well, one or two people that I know, that is all that I can tell you; we have a real Webster in the office. 1428

x Q. 38. What makes you think that the people to whom you spoke of the book knew what they were talking about? A. Well, they were competent to judge, I think.

x Q. 39. What makes them competent to judge? A. Because they have been using Webster's dictionaries for a number of years.

x Q. 40. What ground did they give for alleging

1429

Ida B. Smack—Cross.

that the dictionary which you purchased was not a real Webster's? A. Well, by referring to it I suppose.

x Q. 41. Do you really know why they said the book was not a Webster? A. Well, there were one or two words looked for in that book which could not be found, and they were in the book we have in the office.

1430

x Q. 42. What makes you think the book you have in the office is a real Webster? A. Well, I know it was a standard the one they have always had on file there.

x Q. 43. How do you know it is a standard? A. Well, I only know what they say, that is all.

x Q. 44. Who says? A. Well, the President of the concern for one.

1431

x Q. 45. As a matter of fact, except from what has been told you by people, the ground of whose belief you do not know, can you state whether or not you purchased a real Webster's dictionary? A. Well, I know I didn't.

x Q. 46. How do you know except as indicated in the last question? A. Well, as I tell you I found in our book in the office which is a Webster, what I could not find in the book I purchased.

x Q. 47. What is the size of the book in the office? A. It is a large book on a stand.

(Pointing to Webster's New International Dictionary the latest edition published by the Merriam Company, Mr. Carroll asked the following question.)

1432

x Q. 48. Was the book in your office about the size of this book? A. All I can say, is about.

x Q. 49. What reason had you for believing, if you did so believe that every word given in this book would be in the little book which you purchased?

MR. HALE: Objected to as assuming something to which the witness has not testified.

A. Why I never looked for anything in the large dictionary that I couldn't find.

x Q. 50. (x Q. 49 repeated).

A. Well, I supposed it was the same book, and I would find the same in that as I found in any other.

x Q. 51. What reason had you to believe that you were going to get a \$19 dictionary which is the price of Webster's New International Dictionary for ninety-eight cents? 1434

MR. HALE: Objected to as assuming a fact which has not been proved, namely, that the witness expected to get a book which she knew ordinarily sold for \$19.00.

A. I didn't consider the price, I thought the reading matter, and the "Webster's" name was sufficient.

x Q. 52. You said that friends of yours had bought similar books to the one which you purchased from the New York American before you did. A. Yes. 1435

x Q. 53. Had you seen any of their books? A. Only the cover; that is all; I never went through the book.

x Q. 54. You knew the general appearance and size of the book, however? A. Yes, I knew that it was a black book with a soft cover the same as I have on file.

x Q. 55. And you expected to get a dictionary like the one which your friends had bought? A. A "Webster," yes. 1436

x Q. 46. I mean of the same size and general appearance? A. Which I did get.

x Q. 57. How can you say then that you thought you were getting a book like the big book which is on a stand in your office? A. I knew it wasn't to be that size; I was looking for a "Webster's" Dictionary.

1437

Ida B. Smack—Cross.

x Q. 58. What do you mean by a Webster's Dictionary? A. Why with the name "Webster" and what Webster's Dictionary contains, the contents.

x Q. 59. Who do you think of when you speak of Webster. A. Why the only Webster who ever published the real dictionary; I didn't know there was but one.

1438 x Q. 60. Would you consider that a dictionary which contained little or nothing of the work of that Webster whom you think of when you speak of Webster was a real Webster's Dictionary?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for a conclusion of the witness.

MR. CARROLL: Witness testified that she thought she was getting a real Webster's Dictionary and Counsel is endeavoring to ascertain what she meant by that term.

1439

A. I can only repeat what I said here that I thought that I was getting the real Webster's Dictionary; that is all I can say.

MR. CARROLL: I move the answer be stricken out as not responsive and ask the question be read again.

x Q. 61. (x Q. 60 repeated.) A. No, I would

1440 not.

x Q. 62. As between two dictionaries, one of which contains little of that man Webster's work, and another which contains a great deal of that man Webster's work which would you consider more closely met your requirements of a real Webster's Dictionary?

MR. HALE: Objected to as calling for the opinion of the witness upon the issue being tried as to which she is not qualified as an

expert, and because the real question as presented to this witness is one of identity, not of opinion as to what constitutes a genuine Webster's Dictionary.

MR. CARROLL: Counsel repeats that witness has stated that she intended to buy a real Webster's Dictionary and the question is asked to aid the Court in determining just what witness meant by a "real Webster's Dictionary." 1442

MR. HALE: Further objected to as incorrectly assuming facts.

A. I would consider the one that contained a great deal of that man Webster's work to suit my requirements, as I have occasion to look at the book quite often.

x Q. 63. Do you know the difference between the author and the publisher of a book or of a dictionary? A. As a rule you refer to that before you read the book. 1443

x Q. 64. What is the difference between the author and the publisher? A. The author is the one that writes the book and the publisher finishes it up.

x Q. 65. What do you mean by finishing it up? A. Why they put the book on the market.

x Q. 66. Does the name "Webster" in a dictionary suggest to you the author or the publisher? A. Why the author. 1444

x Q. 67. Did you think about the publisher at all when you purchased this book? A. No, I did not.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 68. In buying this book, did you want to get a dictionary that had a reputation or a dictionary without a reputation? A. One with a reputation.

1445

Isaac K. Funk—Direct.

x Q. 69. As between two dictionaries, one of which is the current edition of the regular series of Webster's dictionaries which have been published by the same house for more than sixty years, and another dictionary which skipped over all recent copyrighted Webster Dictionaries and went back and took some matter from one of the early Webster dictionaries, and published by
 1446 people who have had no connection with the development of the Standard Webster Dictionary, which one would you deem a real Webster Dictionary?

MR. CARROLL: I make the same objection as Mr. Hale did to my x Q. 62.

A. I prefer the one long standing.

DEPOSITION CLOSED.

1447

Ida B. Smack.

Subscribed and sworn to:

John A. Shields,

Standing Examiner.

ISAAC K. FUNK, a witness called on behalf of the complainant, testifies as follows:

1448 DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age residence and occupation? A. Isaac K. Funk; 72 years; residence, Business, 44-60 East 23rd Street; occupation, publisher.

Q. 2. Are you the President of Funk & Wagnalls Company? A. Yes, I am.

Q. 3. Does that company publish dictionaries? A. It does.

Q. 4. Please give the names of the dictionaries

which it publishes? A. The Funk & Wagnalls Standard Dictionary Series.

Q. 5. Does that series consist of both large or unabridged dictionaries and also smaller and abridged dictionaries? A. It does.

Q. 6. About how long have you been engaged in the dictionary publishing business? A. I began about 1890, and have continued up to the present.

1450

Q. 7. In or about 1890 did the Funk & Wagnalls Company do anything toward issuing a dictionary under the name of the "Revised Webster's Dictionary"? A. Yes, we started under that name intending to reprint the 1847 Webster's Dictionary.

MR. CARROLL: I object to all these questions as incompetent, irrelevant and immaterial and move they be stricken out.

1451

Q. 8. Did you abandon your intention to use that title upon your new dictionary and if so, please state fully the circumstances?

MR. CARROLL: I object as incompetent, irrelevant and immaterial.

A. Yes, shortly after beginning we abandoned it because we determined to make a new dictionary bringing it fully down to date; and it seemed to us that it was not wholly fair to use the name of another dictionary, which had a market value for our own production.

1452

MR. CARROLL: And I move as to the last part of that answer "and it seemed to us" be stricken out as not responsive as containing a conclusion of the witness.

Q. 9. In what way had the name "Webster's Dictionary" acquired a market value.

1453

Isaac K. Funk—Direct.

Objected to as incompetent and immaterial and irrelevant.

A. It had been on the market for a great many years, from I think 1828 and had acquired great reputation as an authoritative dictionary of the English language.

1454

Q. 10. To what book was that reputation attached in or about the year 1890 and in subsequent years? A. It was attached to the "Webster Unabridged;" it was called the "Unabridged" up to 1890 and then it was called the International.

Q. 11. And who was the publisher of the books to which you have just referred? A. G. & C. Merriam.

1455

Q. 12. How long have you known of G. & C. Merriam as publishers of Webster dictionaries? A. For a great many years, I think fully a third of a century at least, that is up to that time.

Q. 13. Has Webster's Dictionary to-day a standing and reputation as an authoritative reference work? A. It has.

Q. 14. Please say what is that standing and reputation? A. It is second only to the Funk & Wagnalls Standard; of course it stands very high.

Q. 15. And who is the publisher of the present Webster Dictionary of that high standing? A. G. & C. Merriam.

1456

Q. 16. Has your experience in the dictionary business been such that you are able to say whose book is meant by the term "Webster's Dictionary" as used by the general public to-day? A. I think that ninety-nine out of a hundred persons would think that it is meant the work that is published by G. & C. Merriam.

Q. 17. Are you aware that in recent years there have been quite a number of dictionaries issued in this country using the name "Webster" in their

title which have not been published by G. & C. Merriam Company? A. Yes, I am.

Q. 18. In view of that fact, do you still think that Webster's Dictionary means the Merriam Company's dictionaries in the public mind? A. In the mind of the general public, yes.

Q. 19. Have any of these so-called Webster dictionaries issued by publishers other than the Merriams acquired or do they now possess the reputation and authority which you have said Webster's Dictionary possesses? A. No. 1458

Q. 20. As between two dictionaries, one of which is the current edition of the regular series of editions of Webster's Dictionary published by the Merriams, who have been publishing Webster's dictionaries for over sixty years, and a new dictionary which skipped over all the current and copyrighted editions, and purported to be merely based upon the 1847 edition, and prepared by publishers and editors who had theretofore had no connection with the established series of Webster's dictionaries, which one would be a genuine Webster's Dictionary to-day in your opinion, as understood by the public to-day. 1459

MR. CARROLL: Objected to as calling for the conclusion of this witness on one of the main issues in the case, which it is for the Court to determine.

A. Unquestionably the one that had been edited by those who were chosen by the publishers of the previous edition, and published by Merriam Company. 160

CROSS-EXAMINATION BY MR. CARROLL:

x Q. 21. What do you consider the original Webster? A. Why the original Webster, is the 1828 edition, that was the original, if you mean it in that sense.

1461

Isaac K. Funk—Cross.

x Q. 22. Was the 1847 edition published by the Merriams based on that dictionary? A. Unquestionably it was.

x Q. 23. Was the 1847 edition prepared by Dr. Webster himself?

MR. HALE: Objected to as calling for something not shown to be within the knowledge of the witness.

1462

A. I am not sure; I think Webster was dead by that time.

x Q. 24. It is alleged in the complaint and an admitted fact in this case that Noah Webster, the compiler of the 1828 Webster Dictionary which you have referred to as the original Webster, died in 1843, and that the 1847 edition was not completely prepared by him. Do you think that the 1847 edition was properly called "Webster's dictionary"? A. I do.

1463

x Q. 25. Do you think that a dictionary based on the 1847 edition of Webster's dictionary is properly called a "Webster's" dictionary? A. I think not today, in view of the many additions that have been made to the Webster dictionary from that time to the present and the impression that the word "Webster" makes on the public mind.

1464

x Q. 26. Do you think that the name "Webster" is associated in the public mind with the author of the dictionary or the publisher? A. I think it is associated with the work, that is the dictionary of today which is recognized by the name "Webster".

x Q. 27. Do you think that the general public when purchasing a Webster's dictionary think about the publisher at all? A. Sometimes yes about the publisher; but always I think in accordance with an impression that has been made on their mind by iteration and re-iteration of that name "Webster" in connection with dictionaries.

x Q. 28. How connected with dictionaries as the

name of the author or as indicating the name of the publisher? A. I think in reference to both, and then aside from these names there is a reputation that is attached to it, a something that you couldn't call either the book or the publisher, a general reputation as created by much advertising.

x Q. 29. I suppose you think a book which is largely new and different although based on the 1847 Webster, could not properly be called a "Webster's" dictionary? A. I think not; if it does not come down in the regular line. 1466

x Q. 30. Do you think that the G. & C. Merriam Company have or ought to have any particular property right in the name "Webster".

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. I say yes, because they have helped to make the name valuable by very much advertising and thereby acquire the property right to the name. 1467

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 31. Does the present day reputation and standing of Webster dictionaries rest upon the present copyrighted books of the Merriams or upon the early 1847 or 1828 edition? A. All combined.

DEPOSITION CLOSED.

1468

Isaac K. Funk.

Sworn and subscribed to:

John A. Shields,
Standing Examiner.

Pending the taking of depositions at Boston for which notice has been given the further taking of depositions at New York is adjourned until Thursday, March 14th, 1912, at 2 o'clock.

1469

Henry A. Heymiller—Direct.

New York, March 22d, 1902.

Met pursuant to agreement.

Present—Council as before.

Henry A. Heymiller, a witness called on behalf of the complainant, being duly sworn, testified as follows:

1470

Direct Examination by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Henry A. Heymiller; age, 40; residence, Pittsburgh, Pa.; occupation, selling agents for publishers.

Q. 2. How long have you been engaged in the book-selling business? A. Fifteen years.

Q. 3. And in what location? A. For the last twelve years or so, Pittsburgh and vicinity.

1471

Q. 4. As part of your business, do you sell the *Glossaries*? A. Yes, sir.

Q. 5. Are you familiar with the principal dictionaries of the English language used in this country? A. I think I am.

Q. 6. Please name the principal standard dictionaries in use in this country? A. The Webster, Standard and Century.

Q. 7. Do you or have you handled and sold all of those three dictionaries? A. Yes, sir.

1472

Q. 8. What is the reputation and standing to day of Webster's dictionary as an authoritative reference book? A. It stands first among the dictionaries of the United States.

Q. 9. And how long has it enjoyed that reputation to your knowledge? A. As long as I can remember.

Q. 10. Who is the publisher of this Webster's Dictionary to which you have referred? A. The G. & C. Merriam Company, Springfield Mass.

Q. 11. How long have the Merriam been the publishers of Webster's Dictionary to your knowledge? A. I think about seventy-five years.

Q. 12. Have you sold Webster's Dictionary published by the Merriam? A. I have.

Q. 13. What book or books are the books being today in the market by the name of "Webster's Dictionary?"

The Counselor: Objected to an answer. 1000
Both, Webster's and Merriam's, calling for a conclusion of this witness about one of the main issues in the case.

A. Among students the Merriam book only.

Q. 14. From your experience in the trade, do you know what book the average purchaser or customer understands and intends by the term "Webster's Dictionary?"

The Counselor: Same objection.

1000

A. He inevitably understands the Webster to mean the dictionary published by the Merriam Company and which they recognize and have recognized as the authoritative one; the one that used in schools; the one that fathers send, or at least order, of books.

Q. 15. Upon what information or experience do you base your last answer? A. Upon having found such cases in large numbers among our customers and patrons. 1000

Q. 16. Do you have evidence or not the average and ordinary purchaser knows the name of the publisher of Webster's Dictionary of authentic reputation? A. I think if one is a business man, not the name of the publisher of the Webster is known.

Q. 17. Please explain how it is that such a purchaser nevertheless expects to get a Merriam.

1477

Homer A. Haymaker—Direct.

ary which the Merriams publish, when he asks for a Webster's Dictionary? A. They seem universally to assume that the Webster Dictionary is a living progressive work, one that has its successive editions much the same as the World Almanac has its successive editions, the latest edition of course being the authoritative one at the moment and in buying a Webster Dictionary they naturally expect to get one of this series of Webster's of which they had known from childhood and of which they have heard from their parents or older persons.

1478

Q. 18. Are you aware of the fact that for some years last past there have been dictionaries published and sold as "Webster's" Dictionaries which were not published by the Merriams and not members of the Merriam series of Webster dictionaries? A. I am, and of the disappointment and chagrin with which buyers have subsequently found that they had not purchased one of the series of the dictionaries referred to.

1479

MR. CARROLL: I move that the last part of the answer be stricken out as not responsive beginning with the words "And of the disappointment, etc."

1480

Q. 19. State whether or not in view of your experience in the trade and in the sale of dictionaries the term "Webster's" Dictionary still means a dictionary published by the Merriams, notwithstanding the existence of these other dictionaries published under the name of "Webster," and please give the reasons for any answer you may make?

MR. CARROLL: Objected to as calling for the conclusion of the witness.

A. It does. The "Webster" as published by

Homer A. Haymaker—Direct.

1481

the Merriam Company is generally understood to be the one authoritative Webster and any reference to a Webster dictionary naturally implies the Merriam dictionary.

Q. 20. In the course of your business have you met with and canvassed persons who have bought one of these other so-called Webster dictionaries under the belief that they were obtaining or had obtained a "Webster" dictionary published by the Merriams; and if so please state your experiences in this line somewhat in detail? 1482

MR. CARROLL: Objected to as calling for a conclusion of the witness.

A. Many such cases have come to my personal attention and many hundreds more through our representatives in the field, without having made note of exact names or address, I recall two or three cases at the moment which will illustrate the point. 1483

We conduct an annual exhibit at the Pittsburg Exposition, where we have shown for a period of eight weeks the Merriam Webster. A lady called at our booth last Fall in much glee stating that not over an hour previously she had ordered one of our books, and that she had seen our book at our exhibit a few days before and had become interested; that when the agent called on her and told her that he was handling the genuine Webster dictionary, one just like the one she saw at the exposition, she readily placed her order, making a deposit of four or five dollars, to bind the transaction. Upon investigation, we found that none of our Merriam representatives had been in her neighborhood and the book she really purchased was Webster's Universal Dictionary, published by the Saalfeld Publishing Company, Akron, Ohio. She was almost positive she had 1484

1485

Homer A. Haymaker—Direct.

purchased our book, and it was with much difficulty that we convinced her of the mistake. Another young man, stenographer at the offices of the Universal Portland Cement Company, who had also seen our work on exhibit at the exposition was later visited by the Universal agent and induced to purchase a dictionary, thinking he was getting the Webster he had seen at the expo-

1486 sition.

MR. CARROLL: I move that that whole answer be stricken out, and move in particular that the testimony as to the purchasers of two Saalfield dictionaries be stricken out as incompetent, irrelevant and immaterial and not binding on either of these defendants.

Q. 21. Upon what do you base your statement
1487 that the persons referred to, thought or believed what you have stated they thought or believed?
A. Well, they stated positively that they intended to purchase and thought they were purchasing the Merriam Webster, or the one that we were showing at the exposition.

Q. 22. Please continue with other such instances, if there are any, stating what was said and done, in substance, as nearly as you can recollect?
A. There have been at least two cases
1488 which I recall where schools through the superintendant or through an officer of the board purchased the dictionaries referred to later to find that the Websters they had purchased were not of the series to which even their old and half worn out copies belonged.

Q. 23. And what series was that? A. And that series was the Merriam. One of these schools was that of Midway, Penn., and also McDonald, Pa. As soon as they had found that the books purchased were not of those bearing authority in

Homer A. Haymaker—Direct.

1489

the schools generally and to which they had been accustomed, they took steps to replace with the Merriam dictionary.

Q. 24. What was the book involved in those cases? A. Either Webster's Imperial or the Universal I am not sure which, published by Ogilvie or the Saalfeld Publishing Company.

MR. CARROLL: I move that this testimony relating to dictionaries published by Ogilvie or by the Saalfeld Publishing Company be stricken out as incompetent, irrelevant and immaterial, and not binding on these defendants. 1490

It is stipulated that the foregoing objection and motion shall be deemed taken and made to all testimony relating to books published by other publishers than the Syndicate Publishing Company or Couples & Leon, without being specifically renewed. 1491

The same objection and motion is also made on behalf of each separate defendant against testimony relating to the books published by the other defendant.

Q. 25. About when did this transaction take place? A. I should say within the last year or year and a half.

Q. 26. Are the Webster's dictionaries published by the Merriam Company used in the schools of Pittsburg and vicinity as the standard dictionary of authority? A. They are. 1492

Q. 27. Please continue with other instances of this sort? A. During the past year we have had many kicks where parties purchased either the Webster's New Illustrated Dictionary or Webster's New Standard Dictionary, thinking they were getting one of the authoritative Webster's dictionaries generally used in the schools; one

1493

Homer A. Haymaker—Direct.

such case was that of Mr. Whitmore, Traffic Manager for the Atlantic Coast Line, Pittsburg. He told us that he had purchased a copy of Webster's New Illustrated from the Pittsburg Post, a newspaper of Pittsburg, Pa., thinking he was getting a copy of the authoritative Webster's.

1494

Another case was that of a Mr. Morris who purchased one of the Post dictionaries, thinking he was getting, or at least stating that he thought he was getting the Webster which was published by the firm which published the dictionaries he used in school. He did not know for several months but what the book was one published by the older dictionary firm.

From statements made by these and many others, we know that purchasers were continually deceived into thinking that they were purchasing a Webster Dictionary of well-known authority and standing.

1495

MR. CARROLL: I move that the last part of that answer beginning "from statements made by these and many others, etc," be stricken out as not responsive and as an uncalled for conclusion of this witness.

1496

Q. 28. In the course of your business, have you found that sales of the Merriam's Webster's dictionaries were prevented by the fact that the persons canvassed had already purchased one of these other so-called Webster dictionaries; and if so, please state what has occurred on such occasions?

Mr. Carroll: Objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

A. There were many such cases, among them, all

of the instances referred to above, with the exception of the school boards, parties after having purchased the so-called Webster's even where they said they had intended to buy our book after having seen it on exhibit could not be induced to purchase a second dictionary.

Q. 29. Do they ever undertake to convince you that they have an up-to-date genuine dictionary, and if so, what do they say and do? A. They are so firmly convinced that they have purchased our book, that nothing short of absolute comparison can demonstrate their mistake. 1498

MR. CARROLL: I move the answer be stricken out as not responsive.

Q. 30. What do they say and do on such occasions? A. They say they have been deceived. They usually swear vengeance on all book agents and book firms. 1499

Q. 31. Do they produce and show you the book which they bought? A. They produce the book in positive assurance of their claim, and only by comparison page for page can they be convinced.

Q. 32. What do they point to about the book as showing that they have a genuine Webster's Dictionary up-to-date, or of a current edition? A. To quote an actual case—the party stated, “Oh, yes, it's just the same as yours; it's a Webster Dictionary; a great big book just like yours.” 1500

MR. CARROLL: I move the answer be stricken out as hearsay.

Q. 33. From your knowledge of the book-trade in general, and the dictionary branch of it in particular, with what book would an order given to-day for “Webster's” Dictionary be properly filled?

MR. CARROLL: Objected to as calling for a conclusion of the witness.

1501

Homer A. Haymaker—Direct.

A. The Merriam book which bears to-day, as it has done for seventy-five years or more, the endorsements of schools and the courts.

Q. 34. With what edition of that work would such an order be filled? A. Naturally with the current edition, just as you would get the 1912 World Almanac when an order has been placed for a World Almanac.

1502

Q. 35. Would an order given to-day for a Webster's Dictionary be properly filled by a copy of the 1847 edition of Webster's Dictionary upon which the copyright has expired?

MR. CARROLL: Objected to as calling for the conclusion of the witness.

A. Absolutely not. Any more than you would expect to get a World Almanac published years ago.

1503

MR. CARROLL: I move that the last part of the answer be stricken out as not responsive beginning, "any more than, etc."

Q. 36. What is the full title of the specific book called for by an order for Webster's Dictionary given to-day, as understood in the trade? A. If an unabridged copy were ordered, it would of course mean the current publication known as "Webster's New International Dictionary."

Q. 37. Published by whom? A. As published 1504 by the G. & C. Merriam Company.

Q. 38. And if a small, or abridged Webster's dictionary were called for, what book would be intended and understood as intended by the purchaser? A. It would be one of the abridgments of the International and one conforming to it.

Q. 39. Would an abridgment of the 1847 edition of Webster's Dictionary made to-day by new publishers and new editors, who had previously had no connection with the established series of Web-

ster's dictionaries be the book intended to-day and understood to-day as intended by an order for a small Webster's Dictionary? A. It would not, because such book would not conform to the current publication of the book which is known as the "Webster's."

Q. 40. From what source, if you know, does the purchaser of a Webster's dictionary to-day expect it to come? A. From the publishers of the well known series of Webster's dictionary, G. & C. Merriam Company. 1506

Q. 41. From your experience in this line, do you know whether or not the general public is aware of the fact that there are dictionaries published under the name of "Webster" which do not come from the same source as the well-known Webster dictionary to which you have referred?

MR. CARROLL: Objected to as calling for a conclusion of the witness. 1507

A. They do not.

Q. 42. In your opinion as a salesman of dictionaries, would it be possible in your opinion for a new dictionary to be put upon the market under the name of "Webster's" which would not be greatly benefited in the way of increased sales by reason of the great reputation which the Webster's dictionaries of the Merriam Company have acquired? A. There could not; I should say the name "Webster" means more than all testimonials or endorsements that could be gathered together, so far as they are an aid for making the sales. 1508

Q. 43. Upon what specific editions of "Webster's" dictionary does the present day standing and reputation of that work as an authority rest?

(Same objection.)

1509

Homer A. Haymaker—Direct.

A. The current edition known as "Webster's New International" backed up by the next previous edition, "Webster's International," etc.

Q. 44. Do you know whether or not any of these so-called Webster dictionaries published by others than the Merriams have made their way and obtained a recognition and standing as authorities, meaning of course general recognition and accept

1510

ance? A. From my knowledge I know that in Western Pennsylvania, Eastern Ohio, and West Virginia, no Webster dictionary other than those published by the Merriams have any standing whatever as an authority, and I know of no such reputation elsewhere possessed by the so-called "Webster" dictionary.

Q. 45. You have referred to a "Webster's New Illustrated Dictionary" or "Webster's New Standard Dictionary" as having been sold in Pittsburg and vicinity by the Pittsburg Post; state generally

1511

the nature and extent of that newspaper selling campaign? A. It lasted several months during 1911, I think summer and fall, and the size of the campaign was shown by the fact that the paper for weeks used from a third to a fourth of the front page of the paper for the exploitation of this so-called Webster, and reported from day to day the number of sales made, and finally reaching the figures in the neighborhood of forty thousand copies.

1512

Q. 46. This book was put out by this newspaper in connection with a coupon scheme? A. It was

Q. 47. Please describe the effect of this newspaper campaign on that so-called Webster's dictionaries on your business in the sale of the Merriam Webster Dictionaries? A. Since that campaign was inaugurated, sales of the Merriam Webster in our territory have fallen more than fifty per cent.

Q. 48. Do you recall any specific instances in

Homer A. Haymaker—Direct.

1513

which sales of this book by the newspaper caused you to lose sales of your dictionaries?

MR. CARROLL: Objected to as already having been answered.

A. We have had many cases where names taken at the exposition of parties interested in our books when seen reported to us in language like this—
 “Oh, I have just purchased one of your dictionaries; of course it is a small one, it will answer the purpose now.” 1514

Q. 49. And in such cases, you did not make a sale of your book? A. Otherwise good prospects proved worthless.

Q. 49. You have stated in substance that the use of the name “Webster” in the title of dictionaries not belonging to the Merriam series of established Webster dictionaries deceives the ordinary and average purchaser as to what he is buying. Suppose that such a dictionary bore upon the title page, a statement reading as follows: “This dictionary is not published by the original publishers of Webster’s dictionary, or by their successors.” in your opinion as a salesman and in view of your experience in dealing with purchasers of dictionaries and other books, what effect would such a statement have as preventing deception of the purchaser and confusion in his mind as to the identity of the thing he was buying? 1515

MR. CARROLL: Objected to as unfairly and incorrectly summarizing the witness’s testimony, and as incompetent, irrelevant and immaterial, in that it calls for a conclusion of this witness about facts which it has not been shown he is informed about, and as carrying him into the realm of conjecture. 1516

A. In the progress of our sales we know and find

1517

Homer A. Haymaker—Direct.

that this clause in the printed circulars and on the title page of their books rather inclines the purchaser to the belief that the book is published by an up-to-date present day publisher and that any other Webster or the original Webster's was published by an old firm; in other words, it leaves an impression that the Merriam Company, or the original publishers, do not keep their work up-to-date by later and successive editions of their earlier works. It does not deter people from purchasing a Webster, thinking that they are getting a genuine Webster, or one put out by the right publisher. The young stenographer referred to above saw the references in his printed circular, and yet purchased the Ogilvie book, thinking it was the genuine Webster.

1518

Q. 50. Do you know about how long the Ogilvie or Saalfeld books and advertisements have borne such a notice?

1519

(Objected to as irrelevant and immaterial.)

A. I should say for two or three years.

Q. 51. And within that period, have you known of instances of deception by the book or by the advertisements notwithstanding the fact of such notice? A. The cases mentioned above, including the school boards, belong to this class.

1520

Q. 52. Have you observed within the past few months advertisements of the thin paper edition of the Saalfeld Webster's Dictionary?

(Objected to as irrelevant and immaterial)

(Question continued). You may include in your answer a statement of whether such advertisements have borne the statement quoted? A. We have seen them from week to week.

Q. 53. State what, if any, evidences of deception you have by such advertisements?

(Same objection.)

A. Even with these advertisements containing the clause referred to we have had referred to us from the company letters from parties asking them for quotations and terms of their thin paper edition, and we found such parties with the impression 1522 that the thin paper edition of the dictionary which they saw advertised was one of the Merriam publications, notwithstanding the clause saying the book was not published by the original publishers, etc.

Q. 54. If you know of any specific instance of this, please state them fully.

(Same objection.)

A. A Dr. Mattocks, Swissvale, Pa. had this con- 1523 fusion of books. Dr. Mattocks when seen by our representative asked for quotation on our thin paper edition, and we told him we did not have a so-called thin paper edition, and he produced the Saalfeld advertisement to show us we were wrong.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 55. You stated that after the advertising campaign which the Syndicate Publishing Com- 1524 pany is alleged to have carried on through the Pittsburg Post, the sales of the Merriam Webster dictionary fell off fifty per cent.; did you not?

A. Yes.

x Q. 56. Will you state what particular edition of the Merriam books fell off to this extent in its sales? A. This applies to Webster's New International, Webster's Collegiate, both thin paper and regular edition, and in fact all the editions sold by the Merriam Company.

Q 57. Did the sales of all these editions fall off to the same extent? A. Practically so.

Q 58. Did you to your knowledge ever talk with or see a purchaser of the Webster New Concise Dictionary published by Ginn & Co. A. I do not know.

Q 59. Has your answer to that question that to your knowledge you never did talk to or see such a purchaser? A. I may have seen such a purchaser, but there are so many of these so-called Websters, but so identical in name that practically none of that particular publication, I could not say exactly.

Q 60. I understand you to say that not more than one out of a thousand of the general public know the name G. & C. Merriam Company is that correct? A. I don't believe they do.

Q 61. How do you reconcile that statement with your answer to Q 58, in which you say that persons who had purchased one of the copies of Snodgrass Webster's dictionary stated positively that they intended to purchase and thought they were purchasing the Merriam Webster, and also with your answer to Q 55 in which you state that people who had seen the Snodgrass advertisement of the Blue Paper Webster were under the impression that the book which they saw advertised was one of the Merriam publications? A. I think my use of the word "Merriam" in the first case was simply synonymous with the title of the original

Webster's, the authoritative publication. That is what I meant when I made use of that term. When I made use of the term "Merriam Webster," I meant the publication of the well known dictionary, the one having authority in the schools and courts.

Q 62. Was it not wrong to say then, that the purchase of the Snodgrass book when introduced by you stated in court books that they had purchased one of the Merriam publications? A. They probably did not use the word "Merriam."

Q. (1) But they did not arrive at the conclusion that they thought they were getting the same result? A. No more of the same conclusion as before but now the Germans had said the Americans had only a few soldiers and they concluded that they thought they were getting the same result as we had shown at the exhibition, in other words, "the Germans thought."

Q. (2) The effect of the two cases seemed that in the same conclusion the question was now only the Germans thought? A. We never concluded at our exhibition anything for the Germans and consequently they could not have thought they were purchasing anything there.

Q. (3) Would not it have been possible for them to have seen Webster's statement at our place that it was a copy of the exhibition? A. Not really, especially in the case of Webster's statement, which was not published publicly, although through the store.

Q. (4) What is your connection with H. & C. Morrison Company? A. We usually act as agents for our district in advertising matters, and in connection with other matters that have relation.

Q. (5) Have you an agreement with H. & C. Morrison Company that you will act as their agent? A. Not really. I have been published by other publishers, and I do not.

Q. (6) The use of the fact that H. & C. Morrison Company was published by the H. & C. Morrison Company? A. We do not use the fact that H. & C. Morrison Company was published by the H. & C. Morrison Company.

Q. (7) Is it not possible that the witnesses saw more of a small foreign German's statement than about the exhibition? A. He speaks that we think was the exhibition, but he does not say that. He is not a "German" statement, but having to do with the exhibition, H. & C. Morrison Company.

1533

Homer A. Haymaker—Cross.

tionaries, of which he has heard and read from childhood.

1534

x Q. 71. What leads you to believe, if you do believe, that the average purchaser of the small abridged Webster dictionary has heard and read of any series of Webster's dictionaries since childhood? A. One case will illustrate this point: The young man Morris referred to in my previous testimony stated that in his home in Kentucky his father had owned a Webster's Unabridged, and he had used the same in the public schools, and he had always said as soon as he was able he would have one of these Webster's, and that he had never been able to purchase an unabridged copy but until such time he was satisfied to use a small edition of the work, which proved to be in this case "Webster's New Illustrated Dictionary," published by the Syndicate Publishing Company.

1535

x Q. 72. Is it on instances of that kind that you base the statement that the average purchaser of a small abridged Webster's dictionary has in mind a definite series of Webster's dictionaries? A. That helps to that end.

1536

x Q. 73. I think you have stated two or three times that although buyers of Webster's dictionaries do not as a rule know the name of the G. & C. Merriam Company, nevertheless they want a dictionary similar to or taken from the dictionary which they have known and used in school, is that correct? A. They want either the unabridged or one that conforms to the unabridged edition of the current date.

x Q. 74. Isn't the reason why they want one of the dictionaries mentioned by you, if they do want any of such dictionaries, the fact in the particular case, that they used one of these dictionaries in school? A. Partly that and partly from the fact that they know and feel that that edition was standard and having authority.

x Q. 75. How did they know that that edition was standard except from the fact that it was the one used in school? A. Well, from long period of years, the Webster dictionary was generally accepted as an authority for definitions or for some other qualities, and was so talked among educated and well informed people.

x Q. 76. Don't you know that there are many people whose only knowledge of "Webster's" dictionaries is gathered from the dictionary which they saw on the teacher's desk at school? 1538

MR. HALE: Objected to as assuming a fact not proved and almost unbelievable.

A. I do not. Webster was too generally known for that.

x Q. 77. What did you mean by "Webster" in your answer to the last question? A. The Webster dictionaries as published by the G. C. Merriam Company. 1539

x Q. 78. If in a particular case, Chicago, for example, Webster's dictionaries published by some other publisher than the G. & C. Merriam Company, for example Laird & Lee, were approved by the Board of Education and in general use in the schools, what dictionary do you suppose the ordinary purchaser of one of the ninety-eight cent Webster's dictionaries, who had gone to school in Chicago would expect to get? A. He might easily expect to get the Merriam book, for a single school board's action ought to have little weight as against universal custom and use. 1540

x Q. 79. Don't you believe that an important part of the so-called custom or use of a dictionary is the use in the schools? A. It plays its part, of course.

x Q. 80. Upon what do you base your opinion, if it is your opinion that a person, whose chief ac-

1541

Homer A. Haymaker—Re-direct.

quaintance with Webster's dictionaries was made in a school where Laird & Lees' dictionaries were being used would expect if purchasing a Webster's dictionary to get one of the Merriam publications?

MR. HALE: Objected to as assuming a fact not proven and as calling for a mere guess upon supposed facts with which the witness is not at all acquainted.

1542

A. A school board's action in adopting and endorsing any particular book or text book may or may not represent public sentiment or the public's sense or judgment regarding the merits of the book, and consequently might not be accepted by the citizenship at large, and for that reason when he got ready to purchase a dictionary he would be more apt to purchase the Merriam Webster because of the fact that it was more representative of the judgment of the people as a standard work.

1543

x Q. 81. Then you think that the average purchaser of an abridged Webster's dictionary relies more on his own judgment than on the judgment of the school board when he went to school? A. There are certainly many cases where his own judgment and the judgment of citizenship would be safer than that of a transitory school board.

1544

MR. CARROLL: I move that the answer be stricken out as not responsive; the question is not what would be safer to do, but what the average purchaser would rely on.

x Q. 82. (x Q. 81. repeated.) It would depend altogether on the excellence of the school board.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 83. You have testified that the ordinary and average purchaser does not know that the

Homer A. Haymaker—Re-direct.

1545

name Merriam is the name of the publisher of the Webster well known dictionary, do they know as a matter of fact the books which the Merriam Company publish and are they acquainted with the reputation of such books? A. They know the Webster dictionaries from the unabridged of '64 to the present time, and know them as authoritative.

DEPOSITION CLOSED.

1546

H. A. Haymaker.

Subscribed and sworn to:

John A. Shields,
Standing Examiner.

IT IS HEREBY STIPULATED by and between counsel for the respective parties, to avoid calling H. M. Condit as a witness, that the affidavit of said H. M. Condit, verified the 18th day of December, 1911, and used upon the motion for the preliminary injunction herein, shall be here inserted in the record with the same force and effect as if the same were a deposition regularly taken by question and answer. 1547

It is further stipulated that at the times referred to in the said affidavit, said H. M. Condit was acquainted with G. & C. Merriam Company as the publisher of Webster's dictionaries. 1548

It is further stipulated that said affidavit is subject to all objections other than that the testimony was not given in the regular way by a witness called and examined before the examiner.

1549

*H. M. Condit—Direct.***Affidavit of H. M. Condit**

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

1550

G. & C. MERRIAM COMPANY,
Complainant,*vs.*SYNDICATE PUBLISHING COMPANY,
Defendant.Affidavit of
H. M. Condit.STATE OF NEW YORK,)
City and County of New York,) ss.:

1551

H. M. CONDIT, being first duly sworn, deposes
and says:

1552

I am the secretary of The Stationers Board of Trade, having a place of business at Nos. 97-99 Nassau Street, in the City of New York. On the 17th day of February, 1909, or just prior thereto, The Stationers Board of Trade received in its regular mail from the Saalfeld Publishing Co., of Akron, Ohio, a leaflet advertising Webster's Imperial Dictionary. Being desirous of purchasing Webster's Dictionary for the office, and also a copy for my own personal use, I wrote and sent to G. & C. Merriam Company a letter of which the following is a copy:

New York, February 17, 1909.

G. & C. Merriam Co.,
Springfield, Mass.

Gentlemen:—

Will you kindly let the writer know what is your

H. M. Condit—Direct.

1553

hard pan figure for a Webster's Imperial Dictionary, or such a one as you think would be proper for the writer to have at his home with stand combined; also for copy of one for our office use here, and oblige,

Yours very truly,

The Stationers Board of Trade,

H. M. Condit, Sec'y.

C. R.

1554

I wrote said letter to G. & C. Merriam Company under the impression that the dictionary referred to in the Saalfeld Pub. Co. leaflet was the same dictionary as G. & C. Merriam Co. published and which I thought was being handled by the Saalfeld Pub. Co. I thought it best to go direct to headquarters, viz., to the Merriams, with a view of getting the best and lowest price possible quoted.

H. M. Condit. 1555

Subscribed and sworn to before me}
this 18 day of December, 1911.}

J. P. Berg,

(SEAL) Notary Public,
Kings Co.

Cert. filed in N. Y. Co.

Adjourned to Wednesday, March 27, 1912, at 2:30
o'clock P. M.

1556

1557

Irving Putnam—Direct.

NEW YORK, March 27th, 1912.

2:30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

IRVING PUTNAM, a witness called on behalf of the
 1558 complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation. A. Irving Putnam; age, 60; residence, 1 West 64th Street, New York; business, publisher and bookseller.

Q. 2. And your business is located in New York City? A. New York City.

1559 Q. 3. How long have you been actively engaged in the book business? A. Somewhat more than forty years.

Q. 4. In the course of that business have you handled and sold dictionaries? A. Yes.

Q. 5. Please name the standard dictionary authorities in general use in this country. A. Webster's dictionary in its various forms, the Standard Dictionary, the Century Dictionary; those are the three important American authorities of to-day; the other important authority is Worcester, and there are several important English
 1560 books—Stormouth, Skeat and the Oxford Dictionary.

Q. 6. What is the standing and reputation of the Webster Dictionary, as a work of reference? A. Its standing is of the highest; it may be considered on the whole the dictionary of most universal reference of any in this country.

Q. 7. How long has it enjoyed this reputation,

approximately? A. Well, ever since I have been in business.

Q. 8. Who is the publisher? A. The Merriam Company of Springfield.

Q. 9. Is there any dictionary published under the name of Webster by any one other than the Merriams which enjoys the standing and reputation which you have said the Merriam Company's Webster Dictionary has? A. No.

1562

Q. 10. Has your experience in the book trade been such that you know what book is intended or wanted when a customer asks for a Webster's dictionary? A. Yes.

Q. 11. What book is intended by such an order by the average and ordinary purchaser of dictionaries?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial and as calling for a conclusion of the witness concerning unexpressed thoughts in the minds of third persons not present.

1563

A. Almost invariably some of the Webster series is wanted.

Q. 12. What do you mean by the Webster series? A. Why, the Merriams publish a series of dictionaries in various forms; there is the New International, and there are the various editions of the International, running down to the various small school dictionaries.

1564

Q. 13. If I understand you correctly, then, whether the orders were for a large or a small Webster dictionary, one of the Merriam publications would be intended? A. Yes, unless distinctly specified to the contrary.

Q. 14. I presume you know that there has been various editions, both abridged and unabridged, of Webster's dictionary, beginning with the year

1565

Irving Putnan—Direct.

1806, and published at intervals since that time?

A. I have never seen any of the earliest; the earliest I have ever seen, I think, was an edition published in the late forties.

Q. 15. What edition of Webster's dictionary is intended to-day by the average purchaser and understood to be intended by the trade when a Webster's dictionary is called for?

1566

(Same objection.)

A. Always the latest edition of the particular series wanted.

Q. 16. And upon what particular books or editions does the present day reputation of Webster's dictionaries rest?

1567

MR. CARROLL: Objected to as calling for a conclusion of this witness about a question which he has not been qualified to answer.

A. The reputation has been a growing and cumulative one increasing to a considerable extent from year to year as the work was built up and developed by the best modern scholarship that was put into it.

1568

Q. 17. What connection or relation exists in the mind of the average and ordinary purchaser between the large unabridged Webster dictionary and the small or abridged Webster's dictionaries?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial and as calling for a conclusion of this witness concerning unexpressed thoughts of third persons not present.

A. The smaller dictionaries are considered as abridgments of the large work, but with ex-

actly the same nature and authority of statement; the smaller dictionaries leave out certain of the illustrations upon which the authorities are given but give the conclusions from those statements.

Q. 18. And how about the source or origin of these books? A. Why, they are all based absolutely upon the larger book.

Q. 19. I mean, do, or do not, ordinary purchasers expect a small Webster's dictionary to come from the same concern as makes the large dictionary? 1570

MR. CARROLL: The same objection as above, and also as leading.

A. I don't think the average purchaser looks very carefully for the name of the publisher or the origin of the book they are buying; I think they assume that the Webster's dictionary is one of the series of the Webster books which they have grown up to consider as the great authority on spelling and definitions, and while scholars and experienced persons would look for the origin of the book they were buying in the direction of inspecting the imprint of the publisher, the average buyer, especially of the lower priced dictionary, does not take up very seriously such a question. 1571

Q. 20. In the light of your experience in these matters, would an order for a small Webster's dictionary be properly filled today by a book based upon the 1847 edition of Webster's dictionary, upon which the copyright has expired, but produced by editors and publishers who had theretofore had no connection with the established Webster's series, and please give the reasons for any answer you may make? 1572

MR. CARROLL: Objected to as calling for a conclusion of law.

1573

Irving Putnam—Direct.

MR. HALE: On the contrary the question goes merely to the identity of the book in question.

A. In our establishment and in most book stores, we should not consider an order properly filled that did not supply some one of the regular latest editions of the Merriam book. In a great
 1574 many concerns, such, for instance, as the big mail order establishments in Chicago, an order saying, "Send me the best fifty-cent Webster dictionary" would be filled properly in the judgment of the people managing that business, if any dictionary with the name "Webster" on and selling for fifty cents was supplied.

Q. 21. What effect upon the probable sales of a new dictionary would the use of the name "Webster" as a whole, or a part of the title, have? A. It would give it a distinct advantage
 1575 before the public.

Q. 22. In what way? A. The name "Webster" being in the minds of the general public in this country connected with the series of books that has been to them for three generations the standard authority in all matters pertaining to the English language, a dictionary offered to the average person with the name Webster on, would mean that the book was connected with this great authority for which
 1576 they had always had respect, and on that account, of course, the average intended purchaser would be much more apt to buy a book with the name of "Webster" on it, than with a name that meant nothing to them. For instance, today the name "Worcester" on a dictionary would be of comparatively little value commercially, for general sale, although fifty years ago Worcester's dictionary and the name "Worcester" as con-

nected with dictionary material stood far higher before scholars and the general public than did Webster. Worcester's dictionaries, however, have not been revised and developed during the last thirty years, and the consequence is that the word "Worcester" does not now carry with it any respect or prestige; "Webster" on the contrary, having been connected with a series of books not only kept before the public for the last half century, but, constantly developed, enlarged and revised and brought up-to-date by an enormous expenditure of time and scholarship, stand before the public in such a light that they have increased confidence and respect for the series, and naturally assume that anything in the nature of a dictionary having the magical word "Webster" on it, is entitled to their confidence. 1578

Q. 23. As a person familiar with the book trade, what in your opinion would be the effect upon the mind of the ordinary and average purchaser as tending to distinguish and identify the book if a dictionary entitled "Webster's" dictionary also bore the following notice on its title page—"This dictionary is not published by the original publishers of Webster's Dictionary, or by their successors." Please answer fully? A. Such a notice would affect the value of the book commercially to a certain extent; the extent depending to some degree upon the intelligence of the prospective purchaser. To many people such a notice would mean nothing, so long as the name "Webster" is there. If in addition to that notice was added the statement "This dictionary is based upon the "Webster's" Dictionary of 1847 with some additional material put in by the publishers, and has nothing to do with the modern series of Webster's dictionaries;" if such a notice as that were put in such a form the buyer would see it and understand it, the book 1579 1580

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Irving Putnan—Direct.

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would be rejected by even a person of very moderate intelligence. The value of Webster today is something quite apart from the value of Webster as connected with the various editions of Webster's dictionaries long out of copyright. The name "Webster" today, in my opinion, stands for a series of reference books that have been built up from what was merely a germ in the form of the original "Webster's" dictionary. These books have intended to keep pace with the rapid development of the English language and their value as authorities depends upon the accuracy and scholarship with which they have kept this pace. The first question that an intelligent person asks about any book of reference is "Is it the latest edition; does it embody the latest word, not merely of any hack writer who has been engaged to fill out a certain amount of space, but of the best scholars of the day." In point of fact, the original Webster's dictionary as put forth by Noah Webster had no standing whatever among scholars; it was full of all kinds of linguistic absurdities. The value of the work today is due to the fact that scores of scholars of the highest standing in the community have worked at this series of books for nearly half a century, expunging the original bad and unauthoritative things in Webster's book, and substituting and adding from time to time such material as was necessary to have it represent the scholarship of the day in which it was published. Statements in any reference books of 1840 or 1850 or 1860, even if quite worthy of respect at the time when they were issued would often have to be reversed in an edition of 1900 or 1910 in order to be accepted as representing up-to-date scholarship.

MR. CARROLL: I move that the whole of

the answer beginning with "If in addition, etc.," be stricken out as a voluntary statement on the part of the witness and in no way responsive to the question.

Q. 24. I take it that you draw a distinction between reprints of ordinary literary works upon which copyright has expired and the case of dictionaries and other reference works; if so, please state it as briefly as you can. 1586

Objected to as leading.

A. It seems to me that is a very decided difference. The copyright having expired, there is no injury to reputation or prestige in reprinting a volume of Longfellow's Poems, or a story of Edgar Poe, or a volume of essays by Irving. If the material is reprinted correctly and without garbling it, there can be no harm, except the commercial competition of the sale of such reprints with the former copyrighted editions. It is quite a different matter when a reprint is made of an early edition of a book of reference. Such reprint issued with a current date, unless it is emphasized in the clearest way that the book is but a reprint of an edition half a century out of date, cannot but do injury to the sale of the legitimate revised editions and is, as a matter of course, a gross deception of the public that buy it. It is quite evident that the use of the word "Webster" is to take an unfair advantage and to use unfair competition with the publishers of the modern work; otherwise, some other name would be used. If it was meant merely to make such use as under the law was permissible, that is, to make use of material of which the copyright has expired, it would have been easy to indicate that. But, this of course, would have rendered 1587 1588

1589

Irving Putnam—Cross.

the book so issued of no commercial value; the only commercial value that attaches to it, is from the connection in the mind of the public of the word "Webster" with the modern series of Webster's dictionaries.

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MR. CARROLL: I move that the whole of this answer be stricken out as irrelevant and immaterial, inasmuch as there is no consideration in this case of any reprint of any book; further, I move that the answer beginning with "Cannot but do injury, etc.," be stricken out as not responsive, as a voluntary statement by this witness as to his conclusion on questions of fact and law.

Q. 25. I believe you did not give the full name of the firm or house with which you are connected; please do so? A. The concern is G. P. Putnam's Sons, a New York State Corporation, of which I am the Secretary.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 26. You understand, Mr. Putnam, of course, this suit involves a small abridged Webster's dictionary, which is sold in varying bindings for from forty-eight to ninety-eight cents; what use do you suppose the ordinary purchaser of such a dictionary intends to make of it? A. The ordinary use made of any book of reference.

x Q. 27. Can you be a little more specific? A. To use it for finding or ascertaining the correct spelling of words and their correct definitions; and to find the meaning of such unaccustomed words, reference to which the reader may have seen in the course of his daily reading.

x Q. 28. How complete or authoratative a book do you think the ordinary purchaser expects to get for forty-eight cents? A. Well, it depends a good

deal upon the purchaser; it is a matter of temperament; some might expect to get the New International for forty-eight cents; every one, however, I think, expects to get a work equally authoritative, however extended or elaborate may be the matter upon which the authority is based.

x Q. 29. Do you think that the average purchaser of such a book considers at all the origin of the book or its publisher? A. Not very much; he considers the name of it, much more than the publisher; it would be only the scholar or the experienced bookman or the bookseller that looks into and really understands the various points in connection with the publication of the volume. 1594

x Q. 30. How much more do you suppose the average purchaser of such a book knows about the various editions of Webster's dictionary? A. Why the average purchaser of cheap books doesn't know anything to speak of; but I think anyone who is sufficiently interested to buy a book for household reference is also interested in securing what he considers the latest up-to-date authority. On that point there is very little difference between the average inexperienced person and the cultivated person or the scholar. 1595

x Q. 31. Do you suppose that the average purchaser of such a dictionary has to any extent your conception of Webster's dictionary as a series? A. Yes. I think so, for most of the plain people of the country have been to school and in most of the schools and in nearly all of the schools in fact, during the various grades, had to make use of some one or other of the smaller Webster dictionaries, beginning with the primary, and the common school, academic, and so on. 1596.

x Q. 32. Do you believe that the ordinary purchaser of such a book whom you refer to as the "plain people" have in mind as you have, a series of revisions dated 1828, 1847, 1864, 1890, 1909,

1597

Irving Putnam—Cross.

etc.? A. I don't think any of the purchasers of to-day have any conception of the book or series of books further back than fifty years; I think they assume that the small school editions used by them are merely the epitome of the exhaustive work kept revised and just as accurate and up-to-date as the large work. They assume that if their teacher who has the International dictionary on his desk for reference and gives them the abridged book to work from, that he is not giving them the book which will not agree as to statements with the exhaustive work.

1598

x Q. 33. Then you would say that the average purchaser of such a book would be getting what he expected to get if the book irrespective of its origin was in fact an accurate epitome of the English language and agreed substantially with the large unabridged Webster which he saw on his teacher's desk? A. To a certain extent; and yet, if the same average buyer could have the purchase or the proposed purchase of such a book accompanied by an absolutely true statement of fact, as to the origin of the book, and as to the reason for connecting the word "Webster" with it, I think a large percentage of such purchasers would turn the book down. A book that is presented to the public entirely anonymously except for the use of the magic word "Webster" means to the buyer that there is authority for connecting the word "Webster" with it, and no other name of any kind is attached to this book excepting the name "Webster."

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1600

(Witness refers to Complainant's Exhibit Richard W. Geldart's Dictionary, JAS. EXR., March 6th, 1912.)

MR. CARROLL: "Webster's" New Standard Dictionary, published by the Syndicate Publishing Company in the form abandoned before this suit was instituted. I move that the whole of said answer beginning

“and yet if the, etc.,” be stricken out as not responsive and that the answer beginning with a “a book that is presented” be stricken out as assuming a state of fact not proved.

x Q. 34. Suppose that the only acquaintance which a certain purchaser of one of these small abridged Webster's dictionaries had with Webster's dictionaries before his purchase of this book, was through the use in school of an unabridged Webster's dictionary published by some other publisher than the G. & C. Merriam Company, what book do you suppose such a purchaser would expect to get? A. I don't know. 1602

x Q. 35. What should you suppose?

MR. HALE: I object to what the witness supposes.

A. I could not answer such a question intelligently, because the hypothesis seems to me too flimsy and indefinite. 1603.

x Q. 36. In the schools in Chicago, it is a fact that Webster's dictionaries published by Laird & Lee both abridged and unabridged are in general use in the schools; what book do you suppose a student in one of these schools would expect to get when purchasing a Webster's dictionary? A. I do not know, because I have no experience whatever with Chicago conditions. 1604

DEPOSITION CLOSED.

Irving Putnam.

Subscribed to:

John A. Shields,

Standing Examiner.

Adjourned to Monday, April 1st, 1912, at 11 A. M.

1605

William W. Newberry—Direct.

NEW YORK, Monday, April 1st, 1912.
11 o'clock A. M.

Met pursuant to adjournment.

Present—Counsel as before.

Adjourned to to-morrow, Tuesday, April 2nd,
1606 1912, at 11 o'clock A. M.

NEW YORK, Tuesday, April 2nd, 1912.
11 o'clock A. M.

Met pursuant to adjournment.

Present—Counsel as before.

1607

WILLIAM W. NEWBERRY, called and sworn as a witness on behalf of the complainant, testifies as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. My name is William W. Newberry, residence, St. Louis; age, 42; occupation, financial agent.

Q. 2. Did you recently purchase a dictionary entitled "Webster's" New Standard Dictionary
1608 from the St. Louis Post Despatch, a newspaper of that city?

MR. CARROLL: Objected to on behalf of Cupples & Leon as incompetent, irrelevant and immaterial.

A. Some months since I was manager of the bond department of the American Trust Company and the Title Guarantee Trust Company, St. Louis,

and having noticed the "ad" in the Post Despatch I suggested to the secretary of these companies that I would like to have him purchase one of the dictionaries for my desk.

Q. 3. And the dictionary was accordingly purchased? A. Yes.

Q. 4. What was there in the advertisement that attracted you to make this purchase? A. The fact that it was a Webster Dictionary and that it appeared to be offered at a remarkably low price. 1610

Q. 5. About how long have you known of Webster's Dictionary? A. Ever since I can remember.

Q. 6. And what has been your opinion of its reputation and standing as an authoritative reference book? A. It was the very best.

Q. 7. Did this good reputation have anything to do with causing you to make this purchase from the Post Despatch? A. Yes, had it been any other dictionary I probably would have paid no attention to it at all. 1611

Q. 8. At the time this purchase was made, did you know the name of the publisher of the authoritative standard Webster Dictionary to which you have referred? A. No.

Q. 9. Did you then know whether there were more than one publisher issuing dictionaries described as Webster dictionaries? A. I did not.

CROSS-EXAMINATION by Mr. Carroll:

1612

x Q. 10. Is the term "Webster dictionary" connected in your mind with any particular publisher? A. No, it is not.

x Q. 11. Did you in fact think about the publisher at all when you purchased this book? A. I did not.

x Q. 12. What does the name Webster in the title of the dictionary suggest to you? A. All

1613

William W. Newberry—Cross.

that a dictionary should mean, one where the spelling was correct, definitions accurate, etc., probably I can best explain it by saying that it bears the same relation that the name Smith & Wesson bears to a revolver; when you need it, you need it badly.

x Q. 13. The name Webster in the dictionary then means to you a reliable and accurate dictionary? A. It does and one of authority.

x Q. 14. And the name Webster in the title of a dictionary suggests certain qualities of contents rather than method of publication, does it not? A. Yes.

x Q. 15. And if in fact you purchased under the name Webster a dictionary which was an accurate and reliable dictionary did you purchase what you expected to get? A. I did not purchase what I expected to get, no more than would I trust it than I would a revolver that I presumed when I purchased it was made by Smith & Wesson, and found it was not; I would lose confidence in it, although it might shoot as accurately.

x Q. 16. I presume a Smith & Wesson revolver means to you a revolver manufactured by the Smith & Wesson Company? A. It does.

x Q. 17. You have stated, however, that the name Webster in a dictionary did not suggest any particular publishing house, nor was it connected in your mind with the origin of the dictionary. Why then do you consider the cases analogous?

1616

MR. HALE: Objected to as incorrectly summarizing the witness' testimony.

A. It is connected in my mind with the original Webster and the one that we learned to respect in school.

x Q. 18. The name Webster in a dictionary therefore suggests to you the author of the dic-

tionary; is that correct? A. Well, it would be either author, compiler or the title, I don't know which; it would be just a Webster dictionary.

x Q. 19. What reason have you to believe that you did not get a Webster dictionary, if you do so believe? A. I learned incidentally that the dictionary put out by the Post Dispatch was not what I would term the genuine Webster.

x Q. 20. What would you term the genuine Webster? A. The original dictionary that I have been accustomed to use in school and revised and brought down to date. 1618

x Q. 21. What reason have you to believe that the dictionary which you purchased is not in fact based on the original Webster and revised and brought down to date? A. I have no reason to doubt it except from what I have learned that it was not what I would understand as a genuine Webster, when one feels that it is a substitute one naturally loses confidence in it. 1619

x Q. 22. What basis is there for your statement that it is an imitation or substitute except that some one may have said to you that it was such an imitation or substitute? A. No other basis; I never examined the book.

x Q. 23. As far as you know then, of your own knowledge, you may have purchased exactly what you expected to get? A. Yes.

x Q. 24. Can you state any more accurately than you have already stated just what you expected to get in order to assist the Court in determining whether or not you were deceived? A. I tried to make it clear that I expected to get a dictionary that was either edited, revised or published by the same interests that put out the dictionary of thirty years ago. 1620

x Q. 25. What do you mean by the same interests? A. The same as I would mean by saying the same interests that manufactured Smith &

1621

William W. Newberry—Cross.

Wesson of thirty years ago; the original people are possibly all dead or out of business, but the same general character of the weapon is still being turned out.

1622

x Q. 26. Did it in fact make any difference to you whether or not exactly the same publishers were producing this book so long as the book which you purchased was based upon the same Webster as that upon which the thirty-five year old book which you speak of was based, and so long as it was carefully brought up to date? A. It would make a difference for the reason that I would look upon it as an imitation of the genuine.

x Q. 27. What connection is there in your mind between genuineness and the publisher who we all know has to do simply with the mechanical construction of the book?

1623

MR. HALE: Objected to as incorrectly stating that publishers of dictionaries have only to do with the mechanical printing of the book, whereas the fact is such publishers supervise and control the compilation even of the literary matter contained in such dictionaries.

1624

A. It has to do the same with a dictionary as with any other article that one would purchase, and one would naturally expect to be protected in that purchase.

x Q. 28. Suppose you were offered an exact reprint of the Webster dictionary which you have in mind as being authoritative, but published by some other publisher, would you consider this a genuine Webster dictionary? A. I would not have the same confidence in it, no more than I would in a revolver that was made on exactly the same lines as Smith & Wesson, but which was not the genuine Smith & Wesson.

Louis B. Robinson—Direct.

1625

x Q. 29. What do you expect to use a revolver for? A. For shooting.

x Q. 30. What does the name Smith & Wesson on a revolver mean to you? A. Thoroughly well made, accurate shooting weapon.

x Q. 31. What do you expect to use a dictionary for? A. To ascertain the correct way of spelling words and for definitions.

x Q. 32. And what does the name Webster in a dictionary mean to you? A. That the book is correct. 1626

x Q. 33. Of your own knowledge, you do not know whether or not the book that you purchased is correct, do you? A. I do not.

Deposition closed.

William W. Newberry.

Subscribed and sworn to:

1627

John A. Shields,

Standing Examiner.

LOUIS B. ROBINSON, called and sworn as a witness on behalf of the complaint, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. My name is Louis B. Robinson; my age, 37; residence, Plain City, Ohio; occupation, general agent for the G. & C. Merriam Company. 1628

Q. 2. How long have you been engaged in the business of selling dictionaries? A. For eleven years.

Q. 3. In what general locality? A. Ohio.

Q. What is the reputation and the standing to-

1629

Louis B. Robinson—Direct.

day of the Webster dictionaries published by the Merriam Company as authoritative reference books? A. They are universally accepted by Courts and schools as standard of authority.

Q. 5. How long have these books enjoyed that reputation? A. As long as I can remember.

Q. 6. Are you acquainted with any other dictionaries in use in this country besides the Merriam's Webster dictionary? A. I am acquainted with the Standard, the Century, and the Murray's dictionary as it is called. I think that is the name of that New English dictionary.

Q. 7. Do you or have you in times past sold these dictionaries which you have just mentioned? A. I have.

Q. 8. From your experience in the dictionary business, what books are the books known to-day in the market by the name of Webster dictionary?

1631

MR. CARROLL: Objected to as calling for a conclusion of this witness as to a question of fact which he is not qualified to answer.

A. Those published by the G. & C. Merriam Company.

Q. 9. And how long has this been true to your knowledge?

MR. CARROLL: Same objection.

1632 A. Perhaps twenty years.

Q. 10. From your experience in the trade, do you know and if so, state it, what book the average purchaser or customer understands and intends by the term Webster's Dictionary?

MR. CARROLL: Same objection.

A. He expects to get one of the regular dictionaries published by the G. & C. Merriam Company.

Q. 11. What effect does the good reputation of

the Merriam Company's Webster's dictionaries have in making sales? I want to know how that reputation operates upon the minds of the ordinary purchasers of dictionaries?

MR. CARROLL: Objected to as calling for a conclusion of this witness as to the mental operations of the persons not present and unidentified.

1634

A. The G. & C. Merriam Company have kept their dictionaries up to such a high standard and these books have been accepted by the courts and schools as the standard of authority so long, that the name Webster attached to a dictionary leads them to believe that it is a standard authority, and it is very much easier to sell because of the name Webster and the reputation which it has maintained.

Q. 12. To what extent do the average and ordinary purchasers know the name of the publisher of the Webster's Dictionary of established authority? A. A large percent of the school people know the publishers of the genuine Webster's dictionary, but ninety percent of the public at large do not know the name of the publishers.

1635

Q. 13. Please explain how it is that the public in general, nevertheless, expect to get a dictionary which the Merriams in fact publish, when they ask for a Webster's Dictionary?

MR. CARROLL: Objected to as assuming a state of facts in no way proved and contrary to the actual conditions.

1636

A. Because they have used these books in school, find them in the court rooms, and this confidence has led them to believe that the name Webster on a dictionary would bring them a genuine Webster Dictionary or the one which they always used in school with its revisions and so forth.

Q. 14. Are you aware of the fact that for some

1637

Louis B. Robinson—Direct.

years last past there have been dictionaries published and sold under the description of Webster's Dictionary which were not published by the Merriam Company and which were not members of the Merriam series of Webster's dictionaries? A. I am.

Q. 15. Can you state whether or not in spite of that fact that the ordinary and average purchaser nevertheless expects to get one of the dictionaries published by the Merriams under that name when he gives an order for a Webster's dictionary?

1638

MR. CARROLL: Objected to as assuming a state of facts not proven.

A. In my experience in soliciting for the dictionary I find that the name Webster to more than ninety percent of my prospective patrons means the authoritative Webster's dictionary as used by the courts and the schools.

1639

Q. 16. And that dictionary is published by whom? A. By the G. & C. Merriam Company.

Q. 17. In the course of your business have you met with and canvassed persons who have bought one of these other so-called Webster's dictionaries under the belief that they were obtaining or that they had obtained a Webster's dictionary published by the Merriams, and if so, please state your experiences in this line fully including what was said and done upon the occasions to which you refer?

1640

MR. CARROLL: Objected to on behalf of each of the defendants independently unless it is shown that each one of these aforesaid instances or any of them were connected with the books of either of these defendants; further objected to on the ground that it is hearsay.

A. I have; only a few weeks ago I called upon a

superintendent of schools, Mr. Dougan of Lore City, Ohio, who was a prospective subscriber for one of the Webster's new International dictionaries. I had spoken with him once before, regarding the purchase of a dictionary, and he had asked me to call again. When I returned, he informed me that he had recently purchased a dictionary through the *Jeffersonian*, a newspaper of Cambridge, Ohio, and he showed me a copy of the Webster's New Standard Dictionary. When I showed him the publishers of this dictionary and that it was not of the regular Webster series, he said he had not thought to look for the name of the publishers, but took it that because it was a Webster's dictionary, that it was the one accepted by the courts and the schools. 1642

MR. CARROLL: I move on behalf of the Cupples & Leon Company that the answer so far given be stricken out as irrelevant and immaterial, inasmuch as the dictionary mentioned was not published by the Cupples & Leon Company. 1643

A. (Continuing.) When I went to soliciting in the town, I found a number of people who had purchased this dictionary thinking that they bought a dictionary which was of the same authority as the one that their children used in school.

Q. 18. How do you know they thought that? A. They said so. 1644

Q. 17. Please continue your answer, stating what was said and done? A. I usually asked them if they knew who the publishers of the regular Webster's dictionaries were, and they said that they did not; I asked them if they knew that this book was not published by the same company who had published the Webster's International or the one which was used in their schools, and they said that they supposed that because it was a Webster's dictionary that it was a reliable and authen-

1645

Louis B. Robinson—Direct.

tic work, and bought it because of its name Webster.

1646

I remember distinctly of calling upon a minister who, when I had told him my business, said that he had exactly the same dictionary. When I began to question him, I found that he had the Webster's Universal Dictionary, and would not believe that this was not the same book as the one I was showing him until comparison was made. He then said that he thought it was the dictionary known as the Webster's International Dictionary, but that he had forgotten the exact title, and said that he supposed that he was purchasing it simply through the Saalfield Company of Akron, acting as agent for the regular publishers of the International.

1647

MR. CARROLL: Then I move on behalf of both defendants that this testimony with reference to Webster's Universal Dictionary be stricken out as irrelevant and immaterial in that said dictionary is not published by either of these defendants.

1648

A. (Continuing.) I have in mind another instance of a teacher in Ross County, Ohio, where I called at his school house, and after stating my business, he said that he had exactly the same dictionary as the one I was showing him. After questioning him, I found that he had purchased the Webster's Imperial dictionary. The Webster's Imperial is published by the Saalfield Publishing House of Akron, Ohio. I could not convince him that he did not have the Webster's New International Dictionary published by the G. & C. Merriam Company. I left him, stating that I would send him literature and circular matter explaining the difference between the books and asking him to write me. I later received a letter from him stating that he saw very clearly that his book was not the Webster's dictionary which he

Louis B. Robinson—Direct.

1649

expected to get or thought he had, but that he paid so much money for it, and that even though he had been deceived, he would have to get along with it.

MR. CARROLL: Same motion made on behalf of both defendants.

A. (Continuing) I have met a great many people who purchased dictionaries of different editions by different publishing houses, very similar to the instances above, who thought that they were getting books made by the same company as the one which I was showing them, although they did not know the name of the publisher, and they told me so in conversation with them. 1650

Q. 18. In your opinion, basing your answer on your experience in the sales of dictionaries, would a statement in the following form, to wit: "This dictionary is not published by the original publishers of Webster's dictionary or by their successors." printed upon the title page of a dictionary published by some one other than the Merriam, have any tendency or effect in preventing deception of the public by means of the name Webster in the title of such dictionary, and please give the reasons for any answer you may make? 1651

MR. CARROLL: Objected to as incompetent, immaterial and irrelevant, first, assuming a state of facts not proved, namely, that the name Webster in the title of a dictionary is deceptive and secondly calling for a conclusion of this witness, as to a question which is for the Court alone to determine. 1652

A. I do not think that it would keep one in fifty from purchasing it, because I have seen many instances where the purchaser had never seen this statement, owing to the fact that it would be tucked away in some obscure place in the diction-

1653

Louis B. Robinson—Direct.

ary and even when they did see it, they did not understand it or know its purport.

DEPOSITION CLOSED.

Louis B. Robinson.

Subscribed and sworn to:

John A. Shields,

Standing Examiner.

1654

MR. HALE: Complainant offers in evidence certified copies of the following trademark registrations, being the trademarks alleged in the amendment to the bill herein, to wit:

	18,449	Sept. 23, 1890.
	26,273	Mar. 26, 1895.
	59,188	Jan. 1, 1907.
	59,189	" " "
	59,192	" " "
	59,193	" " "
1655	59,191	" " "
	59,473,	" 8, "
	59,130	" 1, "
	59,187	" " "

The foregoing exhibits bound together in a single pamphlet are received in evidence and marked Complainant's Exhibit Certified Copies of Trademark Registrations.

1656 Complainant offers in evidence against the defendant Syndicate Publishing Company, certain advertisements of the so-called Webster's New Standard Dictionary, bound in a pamphlet and numbered from 1 to 18 both inclusive.

The same is received and marked in evidence as Complainant's Exhibit Additional Advertisements of defendant's Book.

Notice is hereby given that Complainant's *prima facie* case is now closed.

MR. CARROLL: All rights to make motions of all kinds reserved.

DISTRICT COURT OF THE UNITED STATES,

1657

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

AGAINST

CUPPLES & LEON COMPANY,
Defendant.

Equity
8-161.

1658

G. & C. MERRIAM COMPANY,
Complainant,

AGAINST

SYNDICATE PUBLISHING COMPANY,
Defendant.

Equity
8-162.

1659

Testimony taken on behalf of the complainant, for final hearing, pursuant to notice, before John E. Livermore, Esq., a Special Examiner of this Court, pursuant to the 67th Rule in Equity, as amended, at the office of the Special Examiner, No. 11 Niagara Street, in the City of Buffalo, N. Y., on the 26th day of February, 1912, at 10 o'clock in the forenoon.

1660

PRESENT:

The Examiner.

APPEARANCES:

WM. B. HALE, Esq. (New York City), for Complainant;

LAUREN CARROLL, Esq. (New York City), of counsel for the Syndicate Publishing Co., and also Cupples & Leon Co.

1661

Miss Halla Wells—Direct.

IT IS HEREBY STIPULATED by and between counsel for the respective parties herein, that the depositions to be taken before Special Examiner Livermore at Buffalo, N. Y., may be taken stenographically by a competent stenographer appointed by the Special Examiner, and subsequently transcribed into typewriting.

And it is further stipulated that the signatures of the respective witnesses (other than Mr. Porter) be, and the same hereby are, waived.

MISS HALLA WELLS, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Halé:

Q. Please state your residence and occupation? A. Iroquois, N. Y., and I am Matron at the Thomas Indian School at that place.

1663 Q. Is that a school supported by the State of New York? A. Yes.

Q. How long have you been connected with that school? A. It will be nineteen years in April next.

Q. In times past have you been more or less acquainted with Webster's dictionaries? A. Why, we have used Webster's dictionary at the institution. That is the only one we have.

1664 Q. For about how long? A. Ever since I have been there, I guess.

Q. What has been your understanding of the authority and reputation of Webster's dictionary as a work of reference? A. I supposed it was one of the first.

Q. And you have always regarded it so since you have known of it? A. Yes.

Q. Some time in the year 1911 did you purchase a dictionary from the "Buffalo Evening News," a newspaper of this city? A. Yes.

Q. Please tell us how you came to do that, and what you did? A. I came in, and there were several of the students and some of the employees of the institution that wanted dictionaries, and I purchased seventeen, I think it was, and took them out, for the school.

Q. How did you come to go to the Buffalo Evening News for these dictionaries? A. I saw the coupons in the News, and took the coupons and went to the News office for them. 1666

Q. By what name did the News advertise the dictionaries which you bought? A. Webster's.

Q. Did you at that time know the name of the publisher of the Webster's Dictionary which you had previously used in the school? A. No, I don't think so; no.

Q. What dictionary did you intend to buy from the Buffalo Evening News? A. Webster's Dictionary.

Q. Did you know at that time that there was more than one publisher issuing dictionaries under the name of "Webster's Dictionary"? A. No. 1667

Q. What relation did you think there was between the dictionary offered by the Buffalo Evening News and the Webster's dictionaries of which you had already known? A. I supposed they were the same.

CROSS-EXAMINATION by Mr. Carroll:

Q. You stated, in answer to the last question, that you supposed they were the same. By that do you mean the same in contents? A. Yes. 1668

Q. When you said that you wanted to buy a Webster's dictionary, what did you have particularly in mind; in other words, what does the term "Webster's Dictionary" mean to you? A. I don't know just what you mean.

MR. HALE: If you don't understand the

1669

Miss Halla Wells—Cross.

question, say you don't understand it, and he will ask you again until you do understand it.

Witness: I don't understand just what you meant.

Q. I repeat the question, then. Does the term "Webster's Dictionary" mean anything more
1670 to you than a dictionary having good spelling and standard definitions in it? A. Why, I suppose they are the best authority, if that is what you mean.

Q. Does not Webster's Dictionary really mean to you a book originally compiled by Noah Webster and brought up-to-date? A. Yes.

Q. By any one of a numbers of editors? A. I suppose so.

Q. Have you in mind any one particular editor
1671 as having brought the book up-to-date? A. No, sir.

Q. Is it connected in your mind with any particular publisher? A. No.

Q. You buy the book, then, on the reputation of the original compiler, Noah Webster? A. Yes.

Q. You state in your affidavit that you believe that the books which you purchased "belonged to the series of famous Webster dictionaries"? A. Yes.

Q. How did you happen to put those words
1672 into the affidavit? A. Well, of course, the man, the publisher, we have always known—that is, Webster's Dictionaries—as a standard dictionary.

Q. Are those your own words? A. Yes. I was here with Mr. Livermore when I gave the affidavit.

Q. Did you have in mind really what you speak of here as a "series" of books? A. Yes, yes.

Miss Halla Wells—Re-direct.

1673

Q. What did you mean exactly by that term?
(No answer).

MR. HALE: Read the question.

MR. CARROLL: Let it go. It is not really material. That is all.

RE-DIRECT EXAMINATION by Mr. Hale:

Q. I want to identify this dictionary. I show
you a dictionary entitled "Webster's New Stand- 1674
ard Dictionary," and ask you if that is the book
which you purchased from the Buffalo Evening
News? (Hands witness book.) A. Yes.

MR. HALE: I offer the book in evidence
which is identified by the witness, as "Miss
Halla Welles' Dictionary." (So marked
in evidence.)

The Referee:

Q. You stated you had purchased several. 1675
Were all the others copies? A. Yes.

Mr. Hale:

Q. Is this the box or carton in which the dic-
tionary came? (Showing box to witness). A.
Yes.

MR. HALE: I offer that carton or box in
evidence as complainant's Exhibit "Miss
Halla Welles' Dictionary Carton." (So 1676
marked in evidence.)

MR. CARROLL: I object to the whole of
that deposition, on behalf of both defend-
ants as incompetent, irrelevant and imma-
terial; and, particularly on behalf of
Cupples & Leon Co. as immaterial from
the fact that the book is not published by
Cupples & Leon.

1677

Levi E. Porter—Direct.

LEVI E. PORTER, a witness called on behalf of the complainant, having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. Please state your full name, age, residence and occupation. A. Levi E. Porter, Buffalo N. Y.; 46 years old.

1678 Q. How long have you been engaged in selling Webster's dictionaries for G. & C. Merriam Company? A. About ten years.

Q. Have you, during that period, personally sold dictionaries to purchasers and canvassed prospective purchasers in order to sell the Merriam Company's dictionaries? A. Yes.

1679 Q. From your experience in the trade do you know what book the average purchaser or customer understands and intends by the term "Webster's Dictionary"? A. Yes.

Q. What book do the public in general intend and understand by the term "Webster's Dictionary"?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial. The witness is not qualified to speak as to that; and it is calling for the conclusion of the witness.

1680 A. Webster's Dictionary, published by G. & C. Merriam Company.

Q. Give your reasons for that answer and the experience upon which it is based. A. It is the dictionary that is generally used in the schools, has been for years, as a standard; and we often find people who state it is the dictionary that they were brought up on, and even go so far as to state the names of the publishers.

Q. Can you say whether or not the people gen-

erally know the name of the publisher of the standard Webster Dictionaries which have been in use in the schools, and as stated by you, for a long period? A. I think they do.

Q. They do? A. Yes.

Q. What is the name of that publisher? A. G. & C. Merriam Company.

Q. Have you come across instances where people did not know the Merriam name but did know and want the Merriam book; if so, please state your experience along that line? A. I have. Do you want instances? 1682

Q. Not just now. Where a large or unabridged dictionary is the one in contemplation, and the term "Webster's Dictionary" is used, what book do the public generally intend by that term? A. Webster's Dictionary, as published by the Merriam Company, in its modern form.

Q. Can you give the name of the specific editions? A. The original Webster's Unabridged; the Webster's Unabridged, Authentic; the Webster's International; Webster's New International. 1683

Q. Are you trying to give the full list of editions? A. That is what I understood you to ask me.

Q. You misunderstood my question. The question is, what edition of the large or unabridged Webster's Dictionary do the people mean to-day when they use the term "Webster's Dictionary"? A. Webster's Dictionary, as published by the G. & C. Merriam Company. 1684

Q. And can you give the date of those editions that are meant to-day? A. Yes.

Q. Please do so. A. 1847, 1864, 1890, 1910.

Q. Would an order given you to-day for a large Webster's Dictionary be properly filled by a dictionary of the edition of 1847? A. No, sir.

Q. Then, what did you mean in your last answer

1685

Levi E. Porter—Direct.

in saying that the dictionary meant to-day by the term "Webster's Dictionary" was the 1847 edition? A. The entire series published by the G. & C. Merriam Company, the entire series of Webster's Dictionaries.

Q. Why would not an order given to-day for a large Webster's Dictionary be properly filled by the unabridged dictionary of the edition of 1847?

1686 A. Because it is not brought up-to-date and modernized.

Q. How long since you have known of the edition of 1847 having been bought and sold in the trade, except possibly as a second-hand book? A. I couldn't answer that; I don't know.

Q. During all your experience has that been a current book on sale in stores? A. Nothing only in reprint form.

1687 Q. Suppose a small or abridged Webster's Dictionary is the book in contemplation, what book do the public generally understand is intended by "a small Webster's Dictionary"? A. One of the abridgements, published by the G. & C. Merriam Company, of the Webster's large dictionary.

Q. What effect has the use of the Merriam's Webster's dictionaries in the schools of this country had upon the public mind in this respect?

1688 MR. CARROLL: Objected to because it has in no way been proved that Webster's Dictionary, as published by G. & C. Merriam Company, is used in the public schools.

Witness: Read the question.

(Question read).

A. It has lead them to consider it as a standard dictionary.

Q. When they see a book entitled "Webster's

Dictionary" what connection exists in their minds between the Webster's Dictionary used in the schools and the particular dictionary in question?

MR. CARROLL: Objected to as calling for a conclusion of this witness as to what exists in the minds of the third persons not present.

Q. And give your reasons therefor.
Witness: Read the question.

1690

(Question read).

A. It is my experience they are the same.

Q. From your experience do you know what is the reputation of the Webster's dictionaries published by the Merriam Company, as standard and authoritative reference works?

MR. CARROLL: Objected to as incompetent, irrelative and immaterial, and calling for the conclusion of this witness.

1691

A. I do.

Q. What is the reputation of those dictionaries in that respect?

MR. CARROLL: Same objection.

A. As the standard authority.

Q. Upon what do you base your answers that you know that Webster's Dictionary is regarded as a standard authority? A. From a large amount of experience in canvassing prospective customers.

1692

Q. Including what they have stated to you upon such occasions? A. Yes.

Q. From your experience in the sale and canvassing for Webster's dictionaries, please state whether or not it would be possible for any dic-

1693

Levi E. Porter—Direct.

tionary to be put upon the market, with the word "Webster's" as a prominent and distinctive part of its title, which would not be greatly benefited in the way of sales by the good reputation of the Merriam's Webster's dictionaries?

MR. CARROLL: Objected to as calling for the conclusion of the witness.

1694 A. I don't think it would be possible.

Q. Will you give your reasons a little bit for your answer? A. Because I found so many people who bought dictionaries under the name "Webster" supposing, from their statements, that they had secured the Webster's Merriam's dictionaries.

Q. And by what name does the ordinary person refer to the dictionaries published by the Merriam? A. Webster's.

1695 Q. What effect does the addition of some other word such as "New Standard" or "Intercollegiate" have in that connection? A. In my experience it has had no effect at all.

Q. In the course of your business have you, upon occasion, met persons who had bought one of the recent publications of dictionaries using the name "Webster" in the title but which was not published by the Merriam Company, thinking they had purchased the Webster's Dictionary which is published by the Merriam Company; if so please state such instances as you can recall, somewhat in detail?

1696

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial; calling for the conclusion of the witness as to what was in the minds of third persons, and also as not binding on these defendants, unless it be shown that the books mentioned in the question were published by one or the other of them.

A. I have. Do you want me to specify a list?

Q. Take up instance after instance. A. Some time ago, some three or four years ago, I have in mind Judge Stevens of Rochester, as one of them; and Mr. Haley of this city, and Miss Laura Haggerty, I think it is, and still another just comes to me, Louis Westenfelder, living in this city. I don't think I can recall any more, although there are a great many of them.

1698

Q. Please give the details of each of these transactions, including the book which the person named had purchased, and what was said and done at your interview with them? A. It has been some time ago since I interviewed Mr. Stevens, but I had called on him and showed him the dictionary. Webster's Dictionary, and in the intervening time between my first and second call, he had purchased George W. Ogilvie's Dictionary,—I think it was an Imperial, might have been a Universal, I can't remember now; Webster's Imperial or Webster's Universal Dictionary, I am not sure which. Later we sold Mr. Stevens a genuine book.

1699

Another case I have in mind is Mr. Haley. He purchased a dictionary, and I saw him, had a talk with him, and he said he had already purchased a book just like mine; in fact, he was looking at Webster's Merriam Dictionary, the latest edition. He said to me he had purchased one just like it. I asked him where he got it, and he said he purchased it of a concern in Akron, Ohio, I believe. I called his attention to the fact that Merriam Co. were publishing a genuine Webster's Dictionary in Springfield, Mass. Later he saw the difference between the books, and purchased one of the genuine books, giving up the dictionary which he had, which was Webster's Universal Dictionary.

1700

MR. CARROLL: I renew my objection, on

1701

Levi E. Porter—Direct.

the ground it is incompetent, irrelevant, immaterial, and on the further grounds stated above, and move that the answer to the question be stricken out.

Q. Did you see that book in his possession at the time of your conference with him? A. I did—not at the time of the first conference.

1702 Q. At any conference? A. Yes.

Q. Do you remember the case of Mr. George O. Wagner, of 938 Ellicott Square, Buffalo? A. I do, but not definitely.

Q. What do you remember about it? A. I remember that he,—I don't know that I could tell. I would hate to go into detail on that, because it is very hazy in my mind.

1703 Q. I show you an affidavit which you made for the complainant in this case, verified the 13th day of December, 1911, and which has been filed in support of complainant's motion for a preliminary injunction, and ask you to look at it and see if it refreshes your memory as to the Wagner incident? (Hands printed affidavit to witness.) A. Yes.

Q. Please state the fact, as you recollect it, with your memory refreshed? A. I simply called on Mr. Wagner and showed him the dictionary; and when I called again he said he had already bought a Webster's Dictionary.

1704 Q. What had he, in fact, bought? A. He claimed he had bought the same as I had. I looked at it and found it was a Webster's Universal Dictionary.

Q. About when did this occur? A. That must have been three or four years ago.

Q. Do you recall the case of a Mr. C. F. Waldron, who lives in Rochester? A. Yes. That was a case very similar to Mr. Wagner's.

Q. What book had he purchased? A. If I re-

member correctly, it was Webster's Universal, or Webster's Imperial; I don't remember definitely which.

Q. To refresh your memory I show you this same affidavit previously shown you, and call your attention to folio 282 (showing copy). Does that refresh your memory as to this incident? A. Yes, from my records. They show that he purchased a reprint of the Webster Dictionary.

1706

Q. What did he say to you he had purchased when he bought this book? A. Webster's Dictionary.

Q. Did he say anything about its being the recent, current or up-to-date edition, or what did he say? A. I think he did. He told me it was up-to-date.

Q. Have you recently met with persons who have bought the book entitled "Webster's New Standard Dictionary" from the Buffalo Evening News? A. I have.

1707

Q. Give the names of some of such persons, all that you can recall?

MR. CARROLL: Objected to on behalf of Cupples & Leon.

MR. HALE: Attention is called to the admitted fact that Cupples & Leon Company's book was printed from the same plates, or duplicates thereof, as the Syndicate Publishing Company's book, and that the only difference in the title is the use of the words "Webster's New Century Dictionary" instead of the title "Webster's New Standard Dictionary."

1708

A. I have met a great many of them. One of them was Miss Laura B. Hagarty; Miss Love; Miss Fisher; Mr. Nuechterlein; Mr. Graham, and Miss Inskip.

1709

Levi E. Porter—Direct.

Q. Did you meet any others? A. I have met lots of others, but I don't recall their names. I have not made a record of the names.

Q. Judging from what these people said to you at the time of your canvass, what book did they think they had purchased in purchasing this book from the "News"?

1710

MR. CARROLL: Objected to as incompetent, irrelevant, immaterial, and calling for a conclusion by this witness as to what third parties, not present, thought.

MR. HALE: Question withdrawn. I will rephrase it.

Q. In canvassing these persons, what did they say to you, in substance, with respect to the book they had bought, or intended to buy, when they bought this book from the Buffalo Evening
1711 News? A. They said that they had already or just purchased a new Webster Dictionary.

Q. What else, if anything, did they say? A. They usually added that it was up-to-date, and the latest edition of the Webster Dictionary.

Q. Did any of them refer in any way to its relation to the Webster dictionaries such as are used in the schools of Buffalo? A. Yes, some of them did.

Q. What did they say in that regard? A.
1712 Claimed that it was the same.

Q. How many advertising campaigns were carried on during the year 1911 by the Buffalo News in connection with the sale of this dictionary? A. To my knowledge, but two.

Q. And when were they, respectively? A. One must have begun somewhere in October, and the other just before the Xmas Holidays, in 1911.

Q. To what extent are the Webster's dictionaries of the Merriam Company used in the pub-

lic schools of Buffalo? A. I should say practically universally.

Q. For how long has this been the situation? A. Since I have been here.

Q. Which is approximately ten years? A. Ten years.

Q. Did you, in your business, feel the effect of the competition of the Buffalo News in the sale of these dictionaries under the name of "Webster"? A. I certainly did. 1714

Q. Please describe the effects which you noticed—somewhat in detail, giving your reasons for any answer you may make? A. My sales in the city dropped off very materially, and I did some newspaper advertising, have been doing it every year, in nearly every newspaper in the city, large display advertising. The "News" I have used yearly for the past six years, always with good results. I placed an ad. in the "News" after the first campaign of the small dictionary, that is, of the Webster's Standard Dictionary, and received a total of nine replies, as compared to one ad. in the same paper on which I received 1,700 replies, That was a few years ago. I never received less than 100 replies before the one used in November, 1911, on which I received a total of nine replies and sold one dictionary. My sales previous to this one ad. had been on an average of not less than thirty-three and a third per cent. of all replies sent in—sometimes going up as high as sixty per cent. 1715

Q. This advertisement, from which you received only nine replies, was published while the "News" was running advertisements of its so-called "Webster's Dictionary"? A. Yes. 1716

Q. Can you state to what extent your sales fell off in the city of Buffalo and vicinity during and immediately subsequent to the advertising of these dictionaries by the Buffalo News? A. At least fifty per cent., I should say.

1717

Levi E. Porter—Cross.

CROSS-EXAMINATION by Mr. Carroll:

Q. In the advertisements that you spoke of as having been inserted in the Buffalo News by you, and as having brought responses from only nine people, what dictionary were you advertising? A. Webster's Dictionary, published by G. & C. Merriam Co.

Q. What particular Webster's Dictionary? A. The latest edition.

Q. What is its sub-title? A. Webster's New International Dictionary.

Q. What is the price of this dictionary? A. The total price is nineteen dollars.

Q. Do you recall the price at which the dictionary sold by the Buffalo News was offered? A. I do.

Q. What was that price? A. It was advertised as a four-dollar dictionary.

1719

MR. CARROLL: I move that that answer be stricken out as not responsive.

Q. At what price was the dictionary offered, was the question? A. Coupon and 98 cents, I think—44 cents, or 48 cents; 48, 98 and 78—three prices.

Q. Do you suppose that anyone thought they were getting your nineteen-dollar dictionary for 48 cents? A. We didn't advertise the full price of our dictionary.

1720

Q. Do you think that the small abridged dictionaries, published by the Syndicate Publishing Company under the name "Webster's New Standard," or "Webster's New Illustrated Dictionary" sold in competition with the "Webster's New International Dictionary" you have mentioned? A. I think the name "Webster's Dictionary,"—98 cents, 48 cents, was competition, because we advertised dictionaries, delivered at one dollar; that was our leading head.

Q. What dictionary did you mean to deliver

for this price of one dollar? A. I meant to deliver Webster's New International Dictionary on the payment of one dollar down and the balance in monthly payments.

Q. Will you repeat exactly what your heading was? A. I don't know whether I can do that exactly; I think we advertised Webster's New International Dictionary.

Q. I mean about the price. A. Oh—"Delivered 1722 for one dollar"; and we had in smaller type, "Balance paid in small monthly payments, a few cents a week," in the coupon, in some part of the ad. The main part of our ad, which was calculated to catch and draw our inquiries, was "One Dollar Down."

Q. And then, somewhere in much smaller type, I understood you to say, the further terms were stated? A. The further terms and conditions, yes.

Q. You stated that the sales of your dictionary 1723. fell off fifty per cent. while the advertising campaign above-mentioned, as having been conducted by the Buffalo News, was being carried on; the sales of what dictionary do you mean? A. Webster's Dictionary, published by G. & C. Merriam Co., or the dictionary which I am handling.

Q. You mean Webster's New International Dictionary? A. Yes.

Q. Do you handle any of the smaller abridged dictionaries published by G. & C. Merriam Com- 1724. pany? A. Yes.

Q. You did not refer to them, however, when you stated before that sales of Webster's Dictionaries fell off fifty per cent.? A. I referred to the entire series.

Q. Was the entire series affected in exactly the same proportion? A. No, the smaller ones were worst; didn't sell any to speak of.

Q. What were the sub-titles of the smaller dictionaries you refer to as having been sold by you?

1725

Levi E. Porter—Cross.

A. "Webster's Collegiate"; "Webster's Condensed."

Q. Give the prices. A. "Webster's Collegiate," from three to five dollars; and the "Condensed" from 70 cents to \$1.25.

Q. Were these two smaller dictionaries mentioned in your usual advertisements? A. No, sir.

Q. Was I correct in understanding one of your
1726 answers to one of Mr. Hale's questions as being to the effect that the general public value Webster's dictionaries because they are used in schools? A. Yes.

Q. And as stating that they have wanted a dictionary published by the same publisher as the dictionaries used in the schools? A. Yes.

Q. Then, if dictionaries published, for example,
by Laird & Lee, of Chicago, Ill., were in use in the schools of a particular town, you would assume that the people in that particular town
1727 would want a Webster's Dictionary published by Laird & Lee, Chicago, Ill., would you not? A. No.

Q. Why not? A. Laird & Lee's books are smaller, and they are not the standard as found in any town.

MR. CARROLL: I move to strike out that answer as not being responsive.

MR. HALE: You asked why, and that is his reason.
1728

Q. Do you wish to correct your answer, then, to the previous question, namely, that the people value Webster's dictionaries because they are used in the schools? A. No.

Q. Why do you say, then, in spite of the fact that in the town which I have supposed Webster's Dictionary, as published by Laird & Lee, is used in the schools, people would not value those Webster's dictionaries? A. Because I don't think that supposition would be possible.

Levi E. Porter—Re-direct.

1729

Q. What supposition do you mean as being impossible? A. That Laird & Lee's publication is used as the standard in any school in any town.

RE-DIRECT EXAMINATION by Mr. Hale:

Q. The price at which the Buffalo Evening News offered its said dictionaries included a coupon arrangement, did it not? A. Yes.

Q. And the price was represented, not as the price of the book, but as an expense bonus? A. Yes. 1730

Q. The book being advertised as a gift from the newspaper to its subscribers—is that not correct? A. That is my impression, yes.

Q. What is your territory in the sale of the dictionaries?

MR. CARROLL: Objected to as improper re-direct examination.

1731

A. Nineteen counties in Western New York.

Q. In any of those counties, or in any part of your territory, is or is not Laird & Lee's so-called Webster Dictionaries used as a standard authority in the schools? A. I don't think there is a place in my territory where Laird & Lee's books are used as authority in the schools. If there is, I have never found one. I have visited every large school in my territory, and nearly all the small ones.

1732

Q. And you keep in touch with such schools?
A. I keep in touch with the entire territory.

LEVI E. PORTER,
Witness.

Subscribed and sworn to before me }
this 28th day of February, 1912. }

JOHN E. LIVERMORE,
Notary Public,
Erie County, N. Y.

1733

Miss Edith Fisher—Direct.

MISS EDITH FISHER, called as a witness on behalf of the complainant, being duly cautioned and sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Hale:

Q. Where do you live, and what is your occupation? A. 2090 Seneca Street, Buffalo, N. Y., and teaching is my occupation.

1734 Q. In the public schools of Buffalo? A. Yes.

Q. How long have you taught in those schools? A. This is my first school here.

Q. Where else have you taught? A. East Aurora, N. Y.

Q. And how long did you teach there? A. Two years.

Q. Did you go to school in the New York schools? A. Buffalo Normal.

1735 Q. In times past have you been more or less familiar with the book known as Webster's Dictionary? A. Yes.

Q. For about how long? A. Ever since I have been in the Ninth Grade—oh, no, before that, I suppose.

Q. And what has been your notion of the standing and reputation of that dictionary as a book of reference? A. I always supposed it was the best.

1736 Q. Recently have you had occasion to buy a dictionary from the Buffalo Evening News? A. Yes.

Q. About when was that? A. I think in November last. It may have been before that.

Q. I show you a book and ask you if that is the dictionary which you purchased at that time—I think it has your name in it—shew me it.

MR. HALE: I offer the book in evidence, identified by the witness, marked "Complainant's Exhibit, Miss Edith Fisher's Dictionary." (So received in evidence.)

Q. When you bought this book, what book did you intend to buy, and think that you did buy?

A. The regular Webster's Dictionary.

Q. Is Webster's Dictionary used in the public schools of Buffalo? A. Yes.

Q. And has been all the time you have been there? A. Yes.

Q. At the time you bought this book from the Buffalo Evening News did you know the name of the publisher of the Webster's Dictionary which you have said you regarded as a high authority? A. No. 1738

Q. Did you know the name of the publisher of the Webster dictionaries used in the public schools of Buffalo, at that time? A. No.

Q. Did you know whether or not there was more than one concern that published dictionaries using the name "Webster"? A. No, I didn't.

Q. At the time you bought this book did you examine or test it before you bought it? A. No. 1739

Q. Upon what did you rely as an assurance that it was a good dictionary, worth buying? A. Because it was advertised as the Webster.

Q. And Webster's dictionaries had a good reputation in your mind? A. Yes.

Q. What connection did you think there was between this book and the other Webster dictionaries which you had known of and which were in use in the schools? 1740

MR. CARROLL: Objected to, inasmuch as it has not been definitely shown what dictionaries Miss Fisher had been intimate with in the schools or had known.

A. You mean, did I suppose it was the same kind as was used in the schools?

Q. Yes, if that is what you thought. A. I supposed it was by the same author as the one we had used in the schools.

1741

Miss Edith Fisher—Cross.

Q. What about the publisher? A. I didn't think anything about the publisher at all.

Q. Did you think it was one of the books that are standard in the Buffalo public schools? A. Yes.

Q. Have you ever heard of a book called "The Crown Dictionary" before it was mentioned in this suit? A. No.

1742 Q. I show you a book entitled "The Crown Dictionary", which has been offered in evidence in this case and marked "Complainant's Exhibit A", referred to by Mr. H. W. Baker, and ask you if you intended to buy that book, or thought that you were buying it, from the Buffalo News? A. No; I supposed it was a Webster.

CROSS-EXAMINATION by Mr. Carroll:

1743 Q. If, in fact, the book which you purchased was a Webster's dictionary, would it have made any difference to you if for a time it had been sold under the name "Crown Dictionary"? A. I suppose so, because I would not have bought it if it was not called "Webster's".

Q. What did you want? A. I wanted a Webster.

1744 Q. And if, at the time you bought it, it was called a Webster, you would have bought it irrespective of its past name, if in fact it was a Webster? A. How could it be a Webster if it was a Crown? Would it be called a Webster then?

Q. Is that your answer?

MR. HALE: Take that as the answer, unless you want to keep at it.

MR. CARROLL: I certainly do.

Q. On the title page of the "Crown" dictionary, exhibited to you by Mr. Hale, it is stated that

the dictionary is based upon the unabridged dictionary of Noah Webster, L.L.D., and revised and brought up-to-date in accordance with the most recent eminent English and American authorities. It is claimed by the defendants in this case that the description on the title page of the "Crown" Dictionary is a correct one, and that the dictionary is in fact based on Webster's Dictionary. I now repeat my earlier question, which was: If, at the time you bought it, it was called a Webster, you would have bought it irrespective of its past name, if in fact it was a Webster? 1746

MR. HALE: The question is objected to as calling for a conclusion of the witness as to one of the matters in issue.

A. I don't really understand what you mean.

MR. CARROLL: I will ask it again. I will tack on this question to the statement I made. Read the last question. (Last question read.) 1747

Q. I now ask you, if you knew that the claim was a correct one and that this dictionary was, in fact, based on Webster's Dictionary, and at the time you bought it it was correctly labeled "Webster's Dictionary", would you in any way have been deterred from buying it from the fact that for a time previous to that it had been sold under the name of the "Crown" Dictionary? 1748

MR. HALE: Objected to on the ground that it calls for the present guess as to what the witness would have done under circumstances which did not exist.

MR. CARROLL: The question is made necessary by a previous question of Mr. Hale's, also calling for a guess.

1749

Miss Edith Fisher—Cross.

A. If I thought it was ever called "The Crown", I don't suppose I would ever have bought it,—if it had ever been called anything but a "Webster".

Q. What did you want to get? A. I wanted something that was a real Webster, not anything based on it. Any book might be based on anything else, and still be entirely different.

1750 Q. What do you mean by "a real Webster"?

A. One that had been called nothing but a "Webster"; always been a Webster; from the original Webster.

Q. Do you think that the name of the dictionary makes it any more or less a Webster's Dictionary?

A. Well, yes, I think so.

Q. Then, if you were offered a dictionary written by Mr. Hale called "Webster's Dictionary," would you be satisfied that you were getting a Webster's dictionary? A. I don't know.

1751

Q. What is the answer? A. No.

Q. Isn't it, after all, the contents of the dictionary which you desire to be correct? A. Yes.

Q. And, if you are getting the contents of a Webster's dictionary, and at the time you buy it it is properly called a Webster's Dictionary, why should it make any difference to you that those contents have, for a time, in the past, been sold under the name "Crown Dictionary"? A. Because I don't see why they would ever call it anything but a Webster; I don't see what reason they would have to change the name of it.

1752

Q. Would it make any difference to you? A. Yes.

Q. Why does it? A. I think if I started out to buy a Webster I would not want one that had been called something else some other time.

Q. But you say all that you want is a Webster's Dictionary? A. But I want one that has not been called something else.

Q. Then, after all, the name is the most important thing in your mind, not the contents? A. Why, no, the contents with the name of Webster. I would want something that was in the original Webster.

Q. What do you mean by "original Webster"? A. I suppose one that was written by Webster, one that had been approved of by people who know something about dictionaries.

Q. When do you suppose Webster died? A. About 50 or 75 years ago, I don't know exactly.

1754

Q. Do you mean, then, by "an original Webster," which you say you want, the identical dictionary which was entirely written by Webster before his death? A. Oh, no, because everything has changed so since that it should be revised.

Q. Then, don't you mean by the term "Webster's Dictionary," which you expect to buy to-day, a dictionary based upon the original dictionary written by Noah Webster? A. In a sense it would have to be based upon it, of course; but I think it would have to be more than "based" on it.

1755

Q. What do you mean by that? A. Well, any story may be "based" on anything—just take a few facts, but not the whole story. This dictionary may be "based" on the original, but only a few words, giving the same meanings, and a lot of others changed, and still it can be "based" on it, and would not be the real Webster. That is the way I understand it.

1756

Q. Again I ask you what do you mean by "the real Webster." (No answer.)

Q. You have stated that you did not mean by "a real Webster," such as you might buy to-day, the exact Webster which was written by Noah Webster before his death, but that you did mean something which was taken from that dictionary.

1757

Laura Dunbar Hagarty—Direct.

Can you explain that any more definitely? A. Only what I have said.

Q. What more do you want, then, when you intend to buy a Webster's Dictionary to-day, then a dictionary based on the original dictionary edited and compiled by Noah Webster? A. I would want one that had not had the name changed, because I think it should naturally remain the same if most of the words were the same.

1758

Q. Can you explain why the name makes any difference, if it does? A. As long as Webster's has always been regarded as the best dictionary, I don't see why they would change the name and call it "The Crown."

(Signature waived.)

1759

LAURA DUNBAR HAGARTY, called on behalf of the complainant as a witness, and being duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. What is your name, residence and occupation? A. Laura Dunbar Hagarty; 555 Walden Avenue, Buffalo, N. Y.; teacher of English in the Teacher's Training School, Buffalo, N. Y.

Q. Are you also the editor of the English Department of the Normal Instructor? A. Yes.

1760

Q. About how long have you been such an editor? A. Four years.

Q. About how long have you been teaching in the schools of Buffalo? A. About—let me see—I think fifteen years. That is approximately.

Q. Well, approximately will do. A. Well, approximately that is right.

Q. In times past I presume, of course you have

heard of Webster's Dictionary as a work of reference? A. Yes, I have used it.

Q. And have you heard it spoken of and referred to by various people in writings and works of that sort, from time to time? A. Certainly.

Q. During this period what has been your understanding of the reputation and authority of Webster's Dictionary as a work of reference? A. Well, as a teacher of English I have understood that it was the American authority, just as in England the old Worcester Dictionary used to be the authority. 1762

Q. Are Webster's dictionaries used as a standard authority in the schools of Buffalo, to your knowledge? A. I couldn't answer for all the schools, because I have not recently taken that matter up. I assume, though, that all the schools are using, just as we do in the Training School, the Webster dictionary. 1763

MR. CARROLL: I move that the last part of that answer be stricken out as assumption.

Q. In the Fall of 1911, in or about the month of October, did you have occasion to purchase a dictionary from the "Buffalo Evening News," in this city? A. Yes.

Q. How did you come to make that purchase? A. I read the advertisement in the Buffalo Evening News of a dictionary, Webster Dictionary, for sale. I went to the News office and bought a dictionary that I thought I was going to pay \$4.98 for, but, when I received the change, it was a 98-cent dictionary I bought. I thought I was buying the five-dollar edition of the G. & C. Merriam dictionary. 1764

I think I ought to go back and tell you that I had a friend at one time in the Editorial De-

1765

Laura Dunbar Hagarty—Direct.

partment of the G. & C. Merriam Company, and that is how I happened to know this publisher, to know the genuine Webster Dictionary from the other. I am not jumping at G. & C. Merriam; I have known of that publishing house for a great many years.

Q. What made you think you were to pay \$4.98 for this book? A. Careless reading of the advertisement, to tell you the truth.

Q. Did you confuse the book advertised with any specific book of the Merriam's of which you knew? A. Yes. This is more personal history.

Q. If so, please state it fully. A. Last spring my brother-in-law came from Winnipeg with a five-dollar copy of the G. & C. Merriam Webster's Dictionary. It was just the size that I wanted, in every way, the dictionary that I wanted; and when I carelessly read the New's advertisement, I thought that was the dictionary I was getting, That is why I jumped at that dictionary.

Q. Was the name of that dictionary "Webster's Collegiate Dictionary," or can you recall the name? A. I couldn't swear to that. It was a dictionary exactly like the five-dollar edition of the G. & C. Merriam publication.

Q. What particularly attracted you to make this purchase from the News, what in the ad? A. I don't know that I know. I can't answer that question. I don't think I analyzed it sufficiently.

Q. What effect did the name "Webster" in the advertisement of this book have in inducing you to make this purchase? A. It had the entire effect. There was absolutely no other consideration.

Q. Did you examine or test the book at or before the time you bought it? A. No.

Q. What did you rely upon to show that it

Levi E. Porter—Direct.

1769

was a book worth buying? A. The title of "Webster" on the cover.

Q. You intended to buy a book published by what publisher, if you had any particular publisher in mind?

MR. CARROLL: Objected to as already having been answered.

A. I intended to buy the genuine Webster, the G. & C. Merriam Webster. 1770

Q. I presume, owing to your failure to examine this book, that you did not notice the name "Syndicate Publishing Company" in the publisher's imprint? A. No, I didn't.

Q. I show you a book entitled "The Crown Dictionary," which has been marked in evidence in this case, and ask you if you expected to buy that book when you bought the other book from the Buffalo News? A. No. 1771

Q. Of course, then, you did not know that you in fact bought substantially that book?

MR. CARROLL: Objected to as assuming a state of facts not proved.

A. No.

MR. CARROLL: No cross-examination.

I move that the whole deposition be stricken out as immaterial, irrelevant and incompetent. 1772

LEVI E. PORTER, being recalled by the complainant, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. Have you read over all or any portion of your testimony? A. I have read over part of it, yes.

1773

Bernard Nuechterlein—Direct.

Q. Is there any correction or addition you wish to make to any part of it, if so, please do it now?

A. On page 11, line 21, of the transcript, the following question was asked: "Can you give the date of those editions that are meant to-day?" I answered "Yes." The next question that came to me was "Please do so," and my answer was the dates of the entire series. I should prefer to
 1774 give the dates of the Webster International Dictionaries,—1890 and 1910,—the new International, the dictionary meant to-day as the standard.

Q. Is there anything else you would like to add to your testimony? A. Nothing else, as far as I have read it over.

LEVI E. PORTER,
 Witness.

Subscribed and sworn to before me

1775 this 28th day of February, 1912. }

JOHN E. LIVERMORE,
 Notary Public,
 Erie County, N. Y.

BERNARD NUECHTERLEIN, called as a witness on behalf of the complainant, being duly cautioned and sworn, testified as follows:

1776

DIRECT EXAMINATION by Mr. Hale:

Q. Please state your name, age, residence and occupation? A. Bernard Nuechterlein, age 21, 178 Masten street, Buffalo, N. Y.; teacher in the Parochial School on Southampton street.

Q. Have you recently purchased from the Buffalo Evening News, a newspaper of this city, a dictionary entitled "Webster's New Standard Dictionary?" A. It is not entitled "Webster's

New Standard Dictionary;" it says "Webster's Standard Dictionary."

Q. How did you come to purchase this book?

A. There was a coupon in the paper.

Q. About when was this? A. Oh, that is quite a time ago.

Q. In the fall of 1911, fall of last year? A. Some time along there.

Q. When you bought this book what did you believe with respect to whether or not you were getting a genuine Webster's Dictionary? A. No, I didn't know. I knew it was not a real dictionary; I knew just what was coming, I knew it was the dictionary I was getting; I knew it was not the real standard dictionary, for they would not sell that for 98 or 99 cents, whatever it was. 1778

Q. Is that the only reason you had? A. I knew what was coming; I knew the dictionary; I knew that somebody else had it, before I bought it. I knew what it was. 1779.

Q. You had seen it? A. Sure, I had seen it before.

Q. Are you the Mr. Nuechterlein who made an affidavit in this case on or about the 12th day of December, 1911? A. Well, you know how it was. This man came in to me—

Q. Answer the question. Did you make the affidavit? A. I signed my name. I never read through whatever he had there, or anything like that, because I trusted him as a man who would not give me any trouble or anything like that. 1780.

Q. Since making that affidavit has anyone been to see you from the Buffalo Evening News? A. No one.

Q. I show you the affidavit entitled in the case of G. & C. Merriam & Co. against Cupples & Leon Company, and sworn to by you on the 12th day of

1781

Bernard Nuechterlein—Direct.

December, 1911, and ask you if that is your signature (showing affidavit to witness)?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

A. Yes, that is my signature. But, as I said, I didn't read through this at all. I had had it spoken to me before. I would like to read it
1782 through once. I don't know it all what is in there.

Q. Please read that affidavit.

MR. HALE: Complainant's counsel states that he is totally surprised by the evidence of this witness, and for that reason is showing him his affidavit, which was accepted and presented in perfect good faith.

A. (Reading affidavit.) That is not the dictionary I bought.

1783 Q. Have you read the affidavit now? A. I have read it.

Q. Did you sign that affidavit? A. I signed it, but I didn't read it through.

Q. Did you swear to it? A. No, I didn't—I wouldn't—I never signed this paper. He knocked at my door and I came out, and he asked me about it, and I didn't even read it through. I thought there wasn't anything out of the way, and I took him as a good friend of mine, and signed my
1784 name; but I wouldn't sign my name now to such a paper, because that is not what I wanted.

Q. Will you point out any statement in that affidavit that is not true?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, as an attempt to shake the testimony by Mr. Hale of one of his own witnesses.

MR. HALE: Complainant's counsel states

Bernard Nuechterlein—Direct.

1785

that he is of the opinion that this witness has been approached by representatives from the other side, who have repeatedly worked with the complainant's affiants; and, being taken by surprise by this witness's attitude, he wishes to ascertain the full facts.

A. "Webster's New Standard Dictionary"— 1786
that is one of them. I never expected anything like that, because I have Webster's New Standard Dictionary; that is a twelve-dollar book, and I have that at home.

Q. Who publishes the book you have at home?
A. I can't really say that. I think it is the same company I have here.

Q. The Merriam Company? A. Yes.

Q. A large, unabridged dictionary? A. Yes, a
standard book, as the new standard dictionary. 1787

Q. I show you a book which has been offered in
evidence in this case, and ask you if that is a copy
of this book?

MR. CARROLL: Let him finish making his
corrections to his affidavit.

MR. HALE: He used the word "New
standard" in the descriptive sense, not as
a title.

Q. I show you the book marked in evidence in 1788
this case as "Complainant's Exhibit, Miss Edith
Fisher's Dictionary", and ask you if that is a copy
of the book you bought from the Buffalo News?
A. (After examining book referred to.) It is
something similar. I haven't that book any more.
I didn't use it at all.

Q. What did you do with it? A. Sold it, or gave
it to one of my friends.

Q. Who was that friend? A. He is not here in
the city now.

1789

Bernard Nuechterlein—Direct.

Q. Where is he? A. I think that is the book I had.

Q. You observe that that book is entitled "Webster's New Standard Dictionary"? A. It seems to be, yes.

Q. Then the statement in that affidavit that you bought a book entitled "Webster's New Standard Dictionary" is not untrue? A. I knew, 1790 though—

Q. Never mind that. The statement in your affidavit that you bought a book entitled "Webster's New Standard Dictionary" is not untrue? A. Well, it was marked in the paper like that, probably; it was a new dictionary; but I knew I was not getting the new dictionary, but because I had Webster's New International Dictionary in my room. I knew I was not getting the same dictionary, because that is twelve dollars. That it 1791 was entitled like that, or whether other people believed it to be, I don't doubt.

Q. You knew you were getting a small dictionary? A. I knew I was getting a small dictionary, not one of those big ones.

Q. Did you think that this book was an abridgment of one of the big Webster Dictionaries? A. I knew it was not Webster's Unabridged or the abridged—

Q. What did you think it was? A. I just knew what kind of book it was, because I had seen it 1792 before; somebody else had it.

Q. Is there anything else in that affidavit which you think is not true? A. The whole affidavit here would indicate that I bought this book for the New International Dictionary, that big dictionary; that is the way I think; and probably the people who bought this book thought so; but I didn't think so, because I knew it was not the same book.

Q. Read that affidavit, and point out what there

is in it anywhere that says that you bought this book for the big Webster's Dictionary, or the big Webster's International Dictionary. I think you misunderstand the language of that affidavit.

A. Well, the way this affidavit here says—

Q. Please read the part you refer to. A. "I bought it believing I was obtaining a genuine Webster's Dictionary of established authority."

Q. Is that true? A. "I thought it was one of the Webster's Dictionaries which are used as standard authorities, to a large extent, in the schools of this country and which have been so used for many years. I thought it was the current Webster's International Dictionary, and that it was published by the same publishers." 1794

Q. Is that true? A. That is not the way I took it, or what I took it for.

Q. Explain what you took it for. A. The way, as I told you before—the book, as I saw it before; not as some people might have taken it, Webster's New International Dictionary, because I knew what I was getting. 1795

Q. What connection did you think it had with the small Webster's Dictionaries such as are used very commonly in schools?

MR. CARROLL: Objected to, inasmuch as the witness has not testified he ever had seen any small dictionaries used in the public schools.

1796

A. I didn't think about that question at all. It didn't bother me any, what connection they had. I knew the book, and knew somebody else had it; I knew it was a cheap book.

Q. Upon what did you rely as showing that it was worth buying at the price? A. Well, I saw the definitions in it. Some were really correct and simple.

1797

Bernard Nuechterlein—Direct.

Q. Do you know the reputation of Webster's Dictionary as a work of reference in this country? A. Oh, yes, academic; and this New Standard Dictionary I have now, the twelve-dollar book, I know that that is known as one of the best books in the country.

1798 Q. Did that good reputation of Webster's dictionaries have anything to do with making up your mind to buy this book at the cheap price? A. Nothing at all.

Q. Who have you seen in reference to this book at any time? A. Do you mean any of my friends?

Q. Who has called to see you and inquired about your purchase of this book? A. This man here has been——

Q. Mr. Livermore? A. I don't know his name.

1799 Q. This gentleman (indicating Mr. Livermore)? A. No, the other man.

Q. Mr. Porter. He called to see you many times? A. This time he came to the school-room and asked me about dictionaries.

Q. What did you tell him? A. I told him I didn't need any dictionaries in the school. He then came later on, once more, I think.

Q. That first time did he ask you about buying this book from the Buffalo News? A. Yes, he asked me if I had bought a book like that.

1800 Q. What did you tell him? I told him I had done so.

Q. Did you give that as a reason for not buying another Webster's Dictionary? A. No, not at all, because I told him I didn't want any dictionaries, because I didn't need any.

Q. Who next called to see you? A. Nobody else.

Q. How many times did Mr. Porter call there? A. I can't really tell. I guess he was in the room later on. I think he saw a gentleman upstairs.

He was there Saturday and asked me to come down here to-day.

Q. Has anyone else called upon you at any time in connection with this matter? A. Not at all.

Q. Didn't Mr. Livermore, the notary before whom you signed this affidavit? A. He was along that time when I signed.

Q. That was not the first time Mr. Porter 1802 called upon you, was it? A. No, I don't think so; it was the second time, I think.

Q. Upon the occasion of the first call you told him about this purchase and the circumstances of it? A. I didn't tell him much about it at all; just told him I had tried it and I had one, etc., that is all I said; I didn't explain much about it at all.

Q. Has anybody else called upon you since making this affidavit? A. No, excepting that he 1803 was there Saturday again.

Q. You are sure that is the only time any person called upon you in connection with this affidavit? A. There is no one else than Mr. Porter, I think his name is.

Q. No one saying that they represented the Buffalo News? A. Nobody at all.

Q. No one saying that they represented the Syndicate Publishing Company? A. No.

Q. Do you remember you are on oath now? 1804
A. If you can't take my word——

MR. CARROLL: I object again to all this line of testimony. It is an effort to cross-examine and shake the evidence of one of Mr. Hales's own witnesses, to disprove his statements.

WITNESS: If I had known I had testified to anything like that I would never have come down here, nor never testified to this here (affidavit). I took Mr. Porter as

1805

Levi E. Porter—Direct.

honest and true in his statements. I am not a man who tells lies, or anything like that.

MR. CARROLL: No cross-examination.

MR. HALE: That is all.

(Signature waived.)

1806

LEVI E. PORTER, recalled on behalf of the complainant testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. You are Mr. Levi Porter who has already testified in this case? A. I am.

Q. Do you remember calling upon Mr. B. J. Nuechterlein some time in the latter part of the year 1911? A. I do.

Q. State what occurred on that occasion. A.
1807 I called at the school he was teaching in, with the idea of selling a dictionary to the school, Webster's International Dictionary; and I rapped on Mr. Nuechterlein's door, and he came to the door, and I told him what I had, and he said he had just bought a new Webster Dictionary, and I questioned him as to the book he had gotten, and he said it was the—I asked him first was it the genuine Webster Dictionary, and he said he had got the latest Webster Dictionary. I asked him
1808 where he had bought it, and he said he had bought it of the Buffalo News—

MR. CARROLL: I move that the answer be entirely stricken out as incompetent, irrelevant and immaterial, hearsay evidence, not binding on these defendants.

Q. Did you question him as to the book he had purchased, and talk to him about it? A. As I stated just now, I did.

MR. CARROLL: Same objection as before.

Q. Then did you state the substance of what Mr. Nuechterlein had said to you to Mr. Hale?

A. I did.

Q. Then do you know that he prepared a draft of an affidavit? A. I do—Mr. Hale?

Q. Yes. A. I do.

Q. And he gave the same to you to have the same executed by Mr. Nuechterlein? A. He did.

Q. I show you the affidavit signed by Mr. Nuechterlein, and ask you if that is the affidavit which Mr. Hale drafted in accordance with your statement of what Mr. Nuechterlein had stated? A. It is. 1810

Q. Will you please read the same and, having done so, please state whether that affidavit contains an accurate statement of the substance of your conversation with Mr. Nuechterlein and Mr. Nuechterlein's statement to you on that subject?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial; that Mr. Nuechterlein has already testified in this case that the affidavit does not contain his previous thoughts or his present thoughts about this dictionary; that his testimony is the best evidence as to what his ideas are on the subject; and any statement by Mr. Porter is purest hearsay. 1811

A. (After reading affidavit.) It does, to the best of my recollection. 1812

Q. Did you then take that affidavit to Mr. Nuechterlein? A. I did.

Q. Were you accompanied by John E. Livermore, a notary public, on that occasion? A. I was.

Q. Were you present when Mr. Nuechterlein signed and swore to that affidavit? A. I was.

Q. Did you hand the draft of it to Mr. Nuechterlein before he executed it? A. I did.

Q. And did you see him sign it? A. I did.

1813

Examiner's Certificate.

Q. Who was present upon that occasion? A.
Mr. Livermore, Mr. Nuechterlein and myself.

Q. Anybody else? A. No.

MR. CARROLL: No cross-examination.

LEVI E. PORTER,
Witness.

Subscribed and sworn to before me }
this 28th day of February, 1912. }

1814

JOHN E. LIVERMORE,
Notary Public in and for
Erie County, N. Y.

UNITED STATES OF AMERICA, }
Western District of New York, } ss.:

I, JOHN E. LIVERMORE, Special Examiner, duly
appointed by the District Court of the United
States for the Southern District of New York,
as appears by a certified copy of the order of
appointment hereto attached, do certify that in
pursuance of said appointment and pursuant to
notice, the taking of depositions was proceeded
with before me at my office No. 11 Niagara
Street, in the City of Buffalo, State of New
York, in the Western District of New York, on
Monday the 26th day of February, 1912, at ten
o'clock in the forenoon of that day; that the wit-
nesses named in the said depositions being of
sound mind and lawful age were severally pro-
duced, cautioned and sworn to testify the truth,
the whole truth and nothing but the truth in the
matter of controversy aforesaid; that by the con-
sent and stipulation of the counsel for the re-
spective parties said depositions were taken
stenographically and reduced to typewriting by
a competent stenographer and typewriter by me
specially appointed therefor and that the signa-
tures of the said witnesses were waived as ap-
pears by the stipulation of counsel, except that

1815

1816

Examiner's Certificate.

1817

of the witness Levi E. Porter; that the depositions of the said Levi E. Porter when completed and reduced to typewriting were read and subscribed by him in my presence; that the several witnesses whose names are set forth in the annexed depositions severally appeared before me at the place, day and hour as set forth in said depositions of said witnesses hereto annexed; that the several exhibits referred to in said annexed depositions were received and offered in evidence as specifically noticed in said depositions; that in accordance with the consent and stipulation of counsel for the respective parties said exhibits have been marked and a proper reference thereto entered in the record and after having been so introduced and marked in evidence, have been retained by the counsel of the party offering the same; that the reasons for taking said depositions are and the fact is that said witnesses reside at and near the City of Buffalo, in the State of New York, which is more than 100 miles from the place where the above entitled cases are pending for hearing; that in the taking of said depositions I was attended by William B. Hale, Esq., counsel for complainant and by Lauren Carroll of counsel for both defendants, to wit, Syndicate Publishing Company and Cupples & Leon Company.

1818

1819

I do further certify that I am not attorney for or counsel to either of the parties to said suits or either of them or in any manner related to either of the parties, or in any manner interested in the result of said suit, and that I have retained the said depositions in my possession until the same are sealed and transmitted by me to the Court for which the same were taken.

1820

WITNESS my hand at Buffalo, New York, this day of February, A. D., 1912.

JOHN E. LIVERMORE,
Special Examiner.

1821 DISTRICT COURT OF THE UNITED
STATES.

SOUTHERN DISTRICT OF NEW YORK.

	G. & C. MERRIAM COMPANY, Complainant,	Equity 8-161.
	vs.	
1822	CUPPLES & LEON COMPANY, Defendant.	
	G. & C. MERRIAM COMPANY, Complainant,	Equity 8-162.
	vs.	
1823	SYNDICATE PUBLISHING COMPANY, Defendant.	

Boston, March 11, 1912.

Testimony taken on behalf of the complainant, for final hearing, pursuant to notice annexed, before Charles K. Darling, a Special Examiner of this Court, pursuant to the 67th Rule in Equity, as amended, at the Post Office Building, Boston, Massachusetts, at 2 P. M.

1824

APPEARANCES:

The Examiner.

WILLIAM B. HALE, Esq., for Complainant.

GEORGE F. BEAN, Esq., for both Defendants.

GEORGE H. MARTIN, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. George H. Martin; age 70; Lynn, Mass.; retired.

Q. 2. Until the time of your retirement what was your occupation? A. Secretary of State Board of Education from 1904 to 1909; for two years treasurer and agent for the Mass. State Board of Education. 1826

Q. 3. Have you been more or less familiar with Webster's Dictionary in times past? A. Yes, for forty or more years.

Q. 4. In what connections have you known and heard of it? A. I was a teacher in the State Normal School at Bridgewater, and I was familiar with it; after that, as agent of the State Board of Education and Supervisor of the Schools in Boston, and as Secretary of the State Board of Education. 1827

Q. 5. Was Webster's Dictionary used as a standard authority in the schools to which you have referred? A. I should say yes; my impression is that in the Bridgewater Schools both Webster and Worcester were used.

Q. 6. About what year was that when both Webster and Worcester were in use? A. Well, I was in that school from '64 to '82. During that time I had for use both dictionaries in my own library. 1923

Q. 7. During all this period what has been the standing and reputation of Webster's Dictionary as a work of reference? A. Practically I should say it stood at the head of dictionaries, for ordinary working purposes in school or library.

Q. 8. During all this period who has been the publisher of the Webster Dictionaries to which

1829

George H. Martin—Direct.

you have been referring? A. I have always associated them with the Merriams of Springfield, Mass.

Q. 9. During this period did you know of any other Webster Dictionary as a standard authority except the one published by the Merriams? A. No, I never heard of one.

1830

Q. 10. Upon what particular books or editions does the present day reputation of Worcester's Dictionary as an authority rest? A. I should think Webster's Unabridged and Webster's International Dictionary.

Q. 11. Do you know the dates of these two editions? A. I do not.

Q. 12. Can you approximate them? A. According to my memory it was the Unabridged Dictionary which I used in the Normal School. Just when the International succeeded the Unabridged, I am unable to say.

1831

Q. 13. Are you able to state what book is meant by the public generally when they refer to Webster's Dictionary as an authority upon some question of language to-day? A. The latest edition of Webster's Dictionary which the parties have who refer to it as authority.

Q. 14. Published by whom? A. Published by the Merriams.

1832

Q. 15. What other dictionaries are in current use as established or standard authorities in addition to the Webster's Dictionary? A. The Century Dictionary and the Standard Dictionary are in common use.

Q. 16. Would a small book prepared to-day by people who had no previous connection with Webster's Dictionaries, but which was founded to some extent upon the 1847 edition of Webster's Dictionary, be the book commonly known as Webster's Dictionary to-day, all the subsequent copyrighted editions having been skipped over and ignored? A. I should think not.

Q. 17. If you should see a dictionary, either large or small, entitled "Webster's Dictionary," whose publication would you assume it to be? A. Merriams'.

Q. 18. Upon what is the authority of a dictionary based; or in other words how is it acquired? A. I should say on the general opinion of scholars as to the scholarship of the compilers of the dictionary and the accuracy with which they had done their work. 1834

Q. 19. What part does length of use have in establishing the authority of a dictionary? A. Other things being equal, the longer a book has been in use, the better it is known and the better its standing as an authority, I should think.

CROSS-EXAMINATION by Mr. Bean:

x Q. 20. What gave the Webster's Dictionary, with which you say you were familiar in your early years, its authority? I mean what, in your opinion now, gave it its authority then? A. The standing as scholars of the men who made it. 1835

x Q. 21. From whom, originally, did Webster's Dictionary derive its name, if you know? A. From Noah Webster.

x Q. 22. Was it the edition of 1847, known as the Unabridged Dictionary, with which you were familiar in your early days? A. Yes.

x Q. 23. Didn't the ability and fame of Noah Webster as a lexicographer give that dictionary its reputation and authority? A. Yes. 1836

x Q. 24. And do you not understand that subsequent Webster Dictionaries, published by the Merriam Company, have maintained their reputation and authority because of the work of Noah Webster? A. They originally had their authority because of the work of Noah Webster; but their subsequent authority was based on the scholarship of the men who have worked on the successive editions.

1837

George H. Martin—Cross.

x Q. 25. Do you think that the reputation of Webster's Dictionaries in the public mind generally is at the present day based upon the ability of the scholars who have been employed in the production of successive editions by the Merriam Company, or upon the reputation of Noah Webster? A. On the reputation of the men who have built on the Noah Webster foundation, I should think.

1838

x Q. 26. Do you think the public generally know anything about the employment of scholars or editors by the Merriam Company on their successive editions? A. I think the literary and educational men who shape public opinion do know the facts regarding the men who do the work on the dictionaries.

1839

x Q. 27. Do you think it to be the fact that in the minds of the public generally the Merriam Company is at the present day in any way connected with the Webster's Dictionary? A. I think that most people associate to-day the Webster's Dictionaries with the Merriams. Personally, I never should have thought otherwise and I see no reason to think that I am an exception in that respect.

1840

x Q. 28. It would surprise you then, would it not, if you ever learned that of 100 men interviewed at random in business offices and stores in New York City, not one-half dozen knew who published Webster's Dictionaries or connected the Merriam Company's name with them? A. Yes, it would surprise me very much.

x Q. 29. In your mind, the name Webster's Dictionary, when you hear it or when it is cited as an authority, means the latest unabridged dictionary of the Merriam Company, does it not? A. Yes.

x Q. 30. Would the name Webster's Dictionary, in your opinion, suggest any one of the

Abridged Dictionaries published by the Merriam Company? A. Yes, it would mean some one of them. Without the qualifying term, I should not know which one.

x Q. 31. Then the name Webster's Dictionary does not necessarily mean the latest Unabridged Dictionary, to your mind? A. No, because the term Webster's Dictionary has been applied to all the successive forms which the Webster's Dictionary has taken; they call them all Webster's Dictionaries. 1842

x Q. 32. In your testimony you are concerned simply, are you not, with the question of the authority suggested by the name Webster's Dictionary, and you do not claim to know anything about the legal aspects of the question as to the right of any other concern than the Merriam Company to use the name "Webster" in the title of a dictionary? A. I know nothing regarding the legal rights of any of the parties interested. 1843

x Q. 33. Do you think that the word "Webster" can only be properly used if applied to a dictionary by the Merriam Company?

(By MR. HALE): Objected to as incompetent and immaterial and as calling for the personal opinion of the witness upon the merits of the case.

A. That's my opinion, yes. If I should see a dictionary labeled "Webster's Dictionary," and should see on the title page that it was published by someone else than the Merriams, I should be suspicious of it at once, and question its value. 1844

x Q. 34. That is, you would be suspicious as to its authority? A. Yes.

x Q. 35. Am I right, then in understanding you that if an editor should produce a dictionary which was, in fact, a revision and abridgement of the 1847 edition of Webster's Dictionary, and

1845

George H. Martin—Cross.

should cause it to be published by some other concern than the Merriam Company, and should give it a name which included the word "Webster," such name would be improperly applied to such dictionary? A. I should think so, yes.

x Q. 36. I suppose you are somewhat familiar with the copyright law and that after a certain number of years copyright protection on a book expires, are you not? A. I am.

1846 x Q. 37. And you are aware that under that law the copyright of the 1847 edition of the Webster's Dictionary did expire in 1889—forty-two years intervening? A. I should suppose it would have expired by that time.

x Q. 38. Have you been at all familiar with legal decisions with regard to Webster's Dictionaries? A. Not at all.

1847 x Q. 39. So that in your opinion as to the impropriety of calling a dictionary by the name of Webster when it is not published by the Merriam Company is simply based upon your conviction that the Merriam Company alone can give authority to a Webster Dictionary? A. It is based on the fact that all the Webster's Dictionaries that I have known and used have been published under the Merriam Company.

x Q. 40. No dictionary would have authority when it was published and before its scholarship and accuracy had been ascertained, would it? A. 1848 Probably not.

x Q. 41. You said in answer to a direct question that if you saw a dictionary with the name Webster in the title you would assume it was published by the Merriam Company. If you are interested in such a dictionary, would you not look at the title page to see who published it?

(BY MR. HALE): Objected to as incompetent, immaterial and as calling for a prediction and conclusion of the witness.

A. It is my habit to look for the publisher's name of most all the books I have occasion to read or examine.

x Q. 42. Would you be deceived by a dictionary having the name Webster in the title if the imprint on the title page were that of some other publisher than the Merriam Company?

(BY MR. HALE): Objected to as incompetent, irrelevant and immaterial, and as calling for a mere conclusion of the witness upon one of the issues in this case. 1850

A. I should be.

x Q. 43. Would you think such dictionary was a Merriam Company's Webster Dictionary? A. On going from the name of the book to the imprint on the title page I should be undeceived.

x Q. 44. The use of the name Webster would deceive you, would it not? A. Yes. 1851

x Q. 45. And is that because you think no one else besides the Merriam Company has the right to use it?

(BY MR. HALE): Objected to on the ground that the witness has disclaimed any intent to express any opinion upon the matter of legal rights.

A. Because in the dictionaries that I have used no one but the Merriam Company has used it. 1852

x Q. 46. You have no knowledge, have you, as to how many other publishers than the Merriam Company have within the last 20 years published Webster's Dictionaries, but you simply have never run across such publications; is that correct? A. That is correct.

x Q. 47. When you say that in going from the name Webster in the title of a dictionary to the imprint on the title page, and finding that im-

1853

George H. Martin—Re-direct.

print to be the imprint of some other concern than the Merriam Company, you would be undeceived, you mean, do you not, that you would be undeceived in the same way that you would if you were to be looking at a set of the works of Oliver Wendell Holmes, formerly published by the firm of Houghton, Mifflin & Co., under copyright protection, and found the imprint of some other publishing house at the bottom of the title page? A. If it were a publishing house of whom I had never heard I should have less faith in the value of the edition than if it bore the name of Houghton, Mifflin & Co.

1854

x Q. 48. And in the same way you would have less faith in a Webster's Dictionary with some other imprint than that of the Merriam Company? A. Yes, unless it were a name of parties who were the legitimate successors of the Merriam Company,

1855

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 49. Is there any standard Webster's Dictionary of established authority now known that is not published by G. & C. Merriam Company? A. Not known to me.

(EXAMINATION CLOSED.)

George H. Martin.

1856

JOHN J. O'NEILL, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation. A. John J. O'Neill; 33 years; 93 Bloomfield Street, Dorchester; salesman.

Q. 2. You are Order Clerk for the firm of Edwin E. Babb & Company, who are dealers in school books and school supplies at No. 93 Federal Street in the city of Boston? A. Yes. 1858

Q. 3. Do you remember a call from a retail customer in or about January, 1910, for a book called Webster's Sterling Dictionary? A. Yes.

Q. 4. Please state what occurred upon that occasion. A. A gentleman came in and asked for Webster's Sterling Dictionary; told him we didn't have it and had never heard of it. Showed him the other Webster Dictionaries that we carried, published by G. & C. Merriam; he said no, the one that he wanted was called "Webster's Sterling Dictionary," and was published by the same company. I looked up G. & C. Merriam's price list and told him they had no such book listed; he said he was almost certain it was published by this concern; as there are books published of recent dates, we do not at all times know of them, and I advised him that I would write the G. & C. Merriam Company; I did so and they replied that they did not publish the book. 1859 1860

Q. 5. You sent to the Merriam Company your Order No. 77,032, for one Webster's Sterling Dictionary? A. That's right.

Q. 6. How did you come to think of the Merriam Company in this connection and what caused you to look up their list? A. The reason that the name of "Webster" was called for on the dictionary.

1861

John J. O'Neill—Cross.

CROSS-EXAMINATION by Mr. Bean:

x Q. 7. How long have you been with Babb & Company and familiar with the school-book business? A. Nineteen years; all the time with Babb & Company.

1862

x Q. 8. During that time has that concern to your knowledge carried any other Webster Dictionaries than those published by the Merriam Company? A. No; never carried; we have had in stock once or twice Laird & Lee's Dictionary come in with books that we bought.

x Q. 9. Does the Laird & Lee book have the name Webster in the title? A. That I couldn't say.

1863

x Q. 10. Have you ever observed any catalogues of dictionaries to see whether there were other publishers of dictionaries with the name Webster in their titles than the Merriam Company? A.

No, I have not.

x Q. 11. So that really the only publisher of Webster's Dictionaries which you had in mind when this customer called was the Merriam Company, and therefore you communicated with them about Webster's Sterling Dictionary? A. Yes.

x Q. 12. Do you know who publishes Webster's Sterling Dictionary? A. I didn't at the time; but since then found Saalfeld & Co., Akron, Ohio.

(EXAMINATION CLOSED.)

1864

John J. O'Neill.

IT IS STIPULATED that the oath of Horace G. Wadlin and his signature to his deposition are hereby waived. It is also stipulated that said deposition may be taken stenographically by a competent stenographer appointed by the Special Examiner and subsequently reduced to type-writing.

DEPOSITION OF HORACE G. WADLIN.

1866

DIRECT EXAMINATION by Mr. Hale:

Q. 1. What is your name, age, residence and occupation? A. Horace G. Wadlin; age 60; Redding, Mass.; librarian, Boston Public Library.

Q. 2. In times past have you been more or less familiar with Webster's Dictionaries? A. Yes, sir.

Q. 3. About how long have you known of that work? A. From my school days up to the present time.

1867

Q. 4. And of course you have Webster's Dictionary in the Library here? A. Yes, sir.

Q. 5. During the period of your acquaintance with Webster's Dictionary, what has been the standing and reputation of that work as an authoritative work of reference? A. Considered one of the leading authorities.

Q. 6. Will you please name the other standard dictionary authorities as they exist to-day? A. The Century Dictionary, the Standard Dictionary, the New Oxford Dictionary. Of course Worcester's Dictionary formerly had standing; don't know but what it does now.

1868

Q. 7. Who is the publisher of the Webster's Dictionary of standard authority to which you refer? A. G. & C. Merriam, Springfield, Mass.

Q. 8. How long have you known of them as publishers of Webster's Dictionary? A. Continuously as I remember; ever since I have had an intimate acquaintance with the book.

1869

Horace G. Wadlin—Direct.

Q. 9. When the term "Webster's Dictionary" is used to-day to refer to a dictionary authority, what book is intended? A. In my judgment the Webster's Dictionary published by the Merriams in its latest edition, I should say.

Q. 10. Do you know the full name of the latest or recent editions of the Merriams dictionary? A. Either the Imperial or the New International.

1870 If I remember rightly the latest edition is the Imperial; I mean that one where the pages are divided at the bottom.

Q. 11. I beg leave to inform you that the book to which you refer is called Webster's New International Dictionary and is published by the Merriams. A. Well, I thought it was, but I was not sure.

Q. 12. Is there any Webster's Dictionary which is a standard established authority other than the Webster's Dictionary published by the Merriams in use to-day? A. Not as I understand the use of the term "standard authority." You mean of recognized standing among scholars?

1871

Q. 13. I do. A. I should say not.

Q. 14. How does a dictionary acquire acceptance and standing as an authority? A. Through its general reputation, through a series of years as a work of reference.

Q. 15. From an experience as a librarian and your acquaintance with dictionaries and works of reference, would a dictionary prepared by new publishers and editors who had had no previous connection with the established series of Webster's Dictionaries and which was merely based upon the old 1847 edition of Webster's Dictionary be the book understood to-day by the name of Webster's Dictionary? A. I think not.

1872

Q. 16. And if such a book were just recently published would it have the standing and authority which Webster's Dictionary is understood to possess? A. I should say not.

Q. 17. Say, if you know, upon what particular books or editions the present standing and authority of Webster's Dictionary rests? A. Well, I should say on the Unabridged, which was published somewhere in 1864 or '65.

Q. 18. There was an edition of Webster's Unabridged Dictionary published in 1864, of which Noah Porter of Yale College was editor. Is that the book to which you refer? A. That is the book to which I refer and the subsequent revisions of that book published under different titles since. 1874

Q. 19. Webster's International Dictionary, of which Dr. Harris was the principal editor; is that what you mean? A. That's what I mean.

Q. 20. Would even a reprint of the 1847 edition of Webster's Dictionary have the authority and be the book commonly understood to-day by the name of Webster's Dictionary? A. I should say not. 1875

Q. 21. Are you aware that in recent years there have been dictionaries issued under the name of Webster's Dictionary which were not published by the Merriams? A. I understand that to be the fact from advertisements and from my information on the subject. I have never examined any of those books.

Q. 22. Does that fact alter any of the opinions which you have expressed upon this examination? A. No. 1876

Q. 23. Do you know whether or not any of those books have made their way and established a reputation and authority of their own under the name of Webster's Dictionary up to this time? A. They may have established an authority of their own; I don't think they have established a wide authority as standard dictionaries.

1877

Horace G. Wadlin—Cross.

CROSS-EXAMINATION by Mr. Bean:

x Q. 24. You do not undertake to testify, do you, Mr. Wadlin, as to whether or not other publishers than the Merriams may legally employ the name "Webster" to the titles of their books? A. No, sir; I know nothing about their legal rights in the matter.

1878 x Q. 25. You confine yourself simply to the question of the relative authority of such books and the books published by the Merriams? A. Yes, sir.

x Q. 26. You say that a reprint of the 1847 edition would not represent the latest authority in Webster dictionaries. Might it not yet be called a Webster's dictionary?

(BY MR. HALE): Objected to as calling for a mere opinion of the witness.

1879 (BY MR. BEAN): Insisted upon as the witness appears to be called in this examination simply to express his opinion.

(BY MR. HALE): The witness is called to testify to the facts within his knowledge as a skilled observer rather than to testify to mere matters of opinion.

1880 A. It might legally be called a Webster's Dictionary; I know nothing about that; but if so called I do not think it would be the book that is generally understood as Webster's Dictionary.

x Q. 27. If the name Webster's Dictionary were used in citation or as an authority for a definition or spelling, you would understand, would you not, that it referred to the latest Unabridged Webster's Dictionary of the Merriam Company? A. I should.

x Q. 28. You would not then think that such a reference applied to, for instance, their 1884 Abridged Dictionary known as Webster's Con-

densed Dictionary, would you? A. I would be inclined to think it referred to the latest edition, because I should think the latest edition of the work would be cited as reference.

x Q. 29. What, in your opinion, gave the original authority to the 1847 edition of the Webster's Dictionary published by the Merriams? A. I suppose the authority that attached to the 1847 edition or any earlier edition rested on the authority of the editor or author at that time, originally Webster himself. 1882

x Q. 30. Regardless of the question of authority, would not a revision of the 1847 edition of the Webster's Dictionary be, in your opinion, as much a Webster's Dictionary, even though not published by the Merriam Company, as would some intervening edition published by the Merriam Company? A. I don't think such a book would be understood to be Webster's Dictionary as that term is ordinarily used, if I understand your question. 1883

x Q. 31. Your opinion and observation is confined mainly, is it not, to the reputation and authority of Webster's Dictionary among scholars and literary men? A. Yes.

x Q. 32. You know nothing about to what extent the name of the Merriam Company is connected in the public mind with Webster's Dictionaries outside of literary circles? A. I have no means of measuring that as a matter of actual knowledge. I have an opinion about it. I think the public generally understand Webster's Dictionary to be the original Webster's Dictionary as revised and expanded under the publishers who have had control of that work through a long series of years. 1884

x Q. 33. Don't you think that the public mind, so far as the name Webster's Dictionary is understood to represent an authority, such opinion is

1885

Edwin D. Mead—Direct.

based upon the fact that it was originally prepared by Noah Webster, and the public generally think that a Webster's Dictionary that they now may purchase or would cite is a dictionary based upon and an extension or construction of the work of Noah Webster? A. I presume so.

1886 x Q. 34. In your testimony, Mr. Wadlin, and the opinions you have expressed, you do not undertake to enter upon the question of the propriety of the use of the name on dictionaries published by others than the Merriam Company? A. I do not know anything about the legal propriety of such use of the name.

(DEPOSITION CLOSED.)

(SIGNATURE WAIVED.)

1887

Post Office Building,
BOSTON, March 12, 1912.

Met pursuant to adjournment.
Counsel present as before.

EDWIN D. MEAD, a witness called on behalf of the complainant, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

1888 Q. 1. Please state your name, age, residence and occupation. A. Edwin D. Mead; 62 years old; 39 Newbury Street, Boston, Mass.; editor.

Q. 2. Please state the literary and historical work in which you have been engaged in times past? A. I am at the present time, and have been for several years, director of the World's Peace Foundation in Boston; I was previously, for 25 years, director of the Old South Historical Work in Boston, and editor of its publications.

Also for 12 years editor of the New England Magazine.

Q. 3. Has your work in these lines made you more or less familiar with the principal dictionaries in use in this country? A. Yes.

Q. 4. And have you known of the dictionary called Webster's Dictionary? A. Yes; I have constantly used it.

Q. 5. About how long have you known of Webster's Dictionary? A. Oh, 45 years, in its various editions. 1890

Q. 6. During this period what has been the standing and reputation of Webster's Dictionary as an authoritative reference work? A. Of the very highest among scholars and emphatically so with the general public.

Q. 7. Who has been the publisher of the Webster's Dictionary of this great reputation? A. G. & C. Merriam Company of Springfield.

Q. 8. Upon what edition does the present day reputation and standing of Webster's Dictionary rest? A. It rests upon the whole history and reputation of Webster's work from the beginning but preeminently upon the later editions, beginning with what we call the Unabridged, and especially upon the present International. 1891

Q. 9. There is, then, to-day a standard authoritative reference book known as Webster's Dictionary? A. Yes.

Q. 10. And it is published by whom? A. The G. & C. Merriam Company. 1892

Q. 11. Are you at all acquainted with the part taken in the development of Webster's Dictionary by Noah Porter of Yale and Dr. Harris, the U. S. Commissioner of Education? A. I am familiar with both of these men's work.

Q. 12. To what extent have their contributions contributed to the reputation and authority of the present day Webster's Dictionary? A. Very

1893

Edwin D. Mead—Direct.

greatly, because they have added to the earlier editions the results of later philological advance.

Q. 13. In view of this circumstance would even an exact reprint of the 1847 edition of Webster's Dictionary, which was published before Noah Porter had anything to do with it, be the book which is to-day understood and intended by the term Webster's Dictionary?

1894

(BY MR. BEAN): The form of the question is objected to as leading.

A. It would not in ordinary parlance. As a student of Noah Webster and a writer upon Noah Webster, as I have been, I refer to the successive editions of Webster from the beginning as Webster's Dictionaries. But the scholar and the man in the street to-day, speaking of Webster's Dictionary, would mean the revised editions.

1895

Q. 14. Revised by whom? A. Noah Porter as the chief editor, and William T. Harris as the chief editor.

Q. 15. And under the direction of what publisher? A. The G. & C. Merriam Company.

1896

Q. 16. Would a small book, which was merely "based" upon the 1847 edition of Webster's Dictionary, and which was prepared by publishers and editors who had previously had no connection whatever with the regular series of editions of Webster's Dictionary from that time down to this date, be the book commonly understood to-day by the term "Webster's Dictionary"? A. That I answer with more hesitation, speaking popularly. I think people who buy that kind of dictionary are not critical and don't draw fine lines; but if I asked for a small Webster's Dictionary of my bookseller, I should feel he would clearly understand I meant the small edition based upon the Merriam publication.

Q. 17. Do you know of any dictionary pub-

lished under the name of Webster other than those published by the Merriam Company which has established itself as an authoritative accepted reference work? A. Among scholars, not. All scholars would insist upon the later editions. I have seen editions not published by Merriam and casually used them, but should not do it critically.

Q. 18. Have any of such books acquired the standing of an accepted authority in the sense that the Webster's Dictionary published by the Merriams have? A. Certainly not. 1898

CROSS-EXAMINATION by Mr. Bean:

x Q. 19. Fundamentally and primarily, the authority of a Webster's Dictionary rests upon the reputation and ability of Noah Webster as a philologist and dictionary maker, does it not? A. In the same sense that that was true of Dr. Johnson.

x Q. 20. Do you not think that the public at large, personified as "the man on the street," as you have phrased it, when they buy a Webster's Dictionary, do so because of the reputation and ability and because of their general knowledge that a man named Webster was many years ago the compiler and author of a dictionary bearing his name? A. Roughly speaking, yes—the uncritical public. 1899

x Q. 21. You are familiar, I presume, in a general way with the copyright laws of this country and their operation? A. Generally, yes. 1900

x Q. 22. Would you not say that a dictionary based upon the work of Noah Webster and upon an edition of a dictionary published shortly after his death, upon which the copyright expired in or about the year 1889, might truthfully be described as a Webster's Dictionary based upon his work, leaving out of consideration the authority of such a work? A. I think it might.

1901

Edwin D. Mead—Cross.

x Q. 23. But I take it that you would undoubtedly be of the opinion that such a dictionary, if edited by persons in no way connected with the Merriam Company, and published by a house independent of that house, would not have the authority and would not be as reliable as a book of reference as would a dictionary of the series published by the Merriam Company since Webster's death? A. That precisely states my position, because the Merriam Company are recognized as the authorized or regular publishers and because the revisions during their publication are recognized by scholars as having been distinctly the most scientific and valuable.

1902

x Q. 24. When you speak of the Merriam Company as the "authorized" publishers of Webster's Dictionaries, will you explain just what you mean? A. I mean what I should mean in speaking of Houghton & Mifflin, who are the successors of Ticknor and Fields, as the authorized and regular publishers of Emerson and Longfellow, although editions of some of their books published since the expiration of copyright might with strict legality be issued by other publishers.

1903

x Q. 25. So that it is your opinion that editions of Webster's Dictionaries or of Dictionaries bearing the name of Webster in their titles might, with "strict legality," be, in your opinion, issued by other publishers than the Merriam Company?

1904

(BY MR. HALE): Objected to as calling for the opinion of the witness upon a question of law.

(BY MR. BEAN): The question is insisted upon because the witness is as competent to speak of the "strict legality" of the publication of Webster's Dictionaries as he has undertaken to be of the "strict legality" of editions of Emerson's and Longfellow's works.

A. Yes, with this difference in the two cases; that works by Emerson and Longfellow naturally do not go through a revision, whereas dictionaries constantly do, and their significance and value, so far as changes go, depend upon the character of the revision.

x Q. 26. Doesn't your answer amount to this, then: That when you speak of "significance" and "value," you mean authority and reliability, and do not undertake to differentiate in the two cases on the question of strict legality? A. I think I do not differentiate, with this reserve: that if successive editions had been published of Webster's Dictionary since this earlier revision now reprinted, the common mind would assume by "Webster's Dictionary" what Webster's Dictionary had become, and there is the ambiguity. 1906

x Q. 27. In answer to a question in your direct examination, I understood you to say that a small book based upon the 1847 edition of Webster's Dictionary, if edited by persons in no way connected with the Merriam Company and published by someone else than the Merriam Company, would not have the authority or be the book invoked as an authority when a reference should be made to Webster's Dictionary? A. That is my statement. 1907

x Q. 28. Would you consider a small or abridged dictionary published by the Merriam Company in 1884, and in fact entitled, "Webster's Condensed Dictionary," to be the book invoked as an authority to-day by a reference to Webster's Dictionary? A. No. 1908

x Q. 29. Would you consider this dictionary which I described in my last question any more of an authority to-day than a dictionary based upon said 1847 edition, prepared and edited in or about the year 1904, by persons not connected with the Merriam Company and published by some other

1909

Edwin D. Mead—Cross.

concern than the Merriam Company? A. If the recent edition of which you speak had been in the hands of thoroughly good scholars I should certainly respect it as much as the earlier abridged edition of the Merriams.

x Q. 30. The relative authority of the two, then, would in your mind be simply a question of the scholarship of the respective editors of the two
1910 books, taking into account, also, that one was edited and published twenty years before the other? A. That describes it.

x Q. 31. Then if you were to ask a bookseller for a small dictionary based upon a Merriam publication in the way you described in one of your direct answers, and the bookseller should offer you the dictionary which I just described, published in 1904, would you not be getting what you asked for? A. I should feel that if I asked for a small
1911 or condensed Webster's Dictionary and was given a condensed dictionary based upon this old edition on which the copyright has expired, instead of a condensed dictionary based not upon the Merriam publication of 1884, but a later Merriam publication of the condensed edition, that I was defrauded.

x Q. 32. That is to say that the fact that it was not published by the Merriam Company would make it a fraud? A. I would not say that it was a fraud not to be published by the Merriam Company, but to let it be sold without explanation to the ordinary man, I think would deceive the man.
1912

x Q. 33. Would you not consider the imprint of another publishing house on the title page such an explanation as you referred to in your last answer? A.

(By MR. HALE): Objected to as calling for the mere opinion of the witness as to what would be a sufficient distinguishing statement.

(BY MR. BEAN): Question is insisted upon because the witness is here to express his opinions on the question involved in this case.

(BY MR. HALE): On the contrary, the witness has been called merely to testify to facts within his knowledge as a skilled observer and not to express personal opinions.

1914

A. I think it would not be adequate protection because the multitudes of good and thoughtful people are not critically familiar with publishers and do not look at a publisher's imprint on the title page.

x Q. 34. If the title page were to include the statement "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors," would not such statement be, in your opinion, a sufficient explanation?

1915

(Same objection.)

A. If this statement were clearly and distinctly brought to the attention of the purchaser, it might be.

x Q. 35. You do not claim or undertake to testify as to the legal propriety of the use of the name Webster in the titles of dictionaries by other publishers than the Merriam Company? A. I am not an expert lawyer.

1916

x Q. 36. And you are unfamiliar with the decisions of the court upon this question? A. Practically unfamiliar. Speaking roughly, if a man chooses to reprint the very first old editions of Webster's Dictionary it is his privilege and the editions would have an historical and curious interest.

x Q. 37. You do not know whether or not the courts have decided that revisions of such early

1917

Edwin D. Mead—Re-direct.

editions may be prepared and issued by other publishers?

(BY MR. HALE): This question and this line of examination is objected to as incompetent, irrelevant and immaterial, as calling for the opinions of the witness on matters of law, and as not proper cross-examination.

1918

(BY MR. BEAN): The question is insisted upon because it does not ask for the opinion of the witness upon questions of law with which he has disclaimed any knowledge, but simply as to whether he is familiar with the decisions of the courts upon the point involved in the question as a matter of fact.

A. I do not know.

1919

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 38. You have compared and contrasted reprints of such works as those of Emerson and Longfellow upon which the copyright has expired with reprints of old editions of Webster's Dictionary. It is true, is it not, that if a person purchases a reprint of Emerson or Longfellow from some publisher other than the regular or original publisher he nevertheless gets the same literary composition which he intended to buy?

1920

A. He does.

Re-D. Q. 39. When an average purchaser calls for a Webster Dictionary to-day and in place of being given a copy of the current editions of the Merriam Company is given a reprint of the old obsolete expired edition, does he or does he not obtain the same literary composition that he had in mind to buy?

(BY MR. BEAN): Objected to since it is

manifestly impossible for the witness to know what dictionary a purchaser has in mind to buy, and can only testify as to what he would have in mind himself to buy.

A. He does not obtain what I am confident the ordinary man intends to buy.

Re-D. Q. 40. Putting the question another way, is or is not a reprint of the obsolete expired 1847 edition, which has been off the market since 1864, the identical literary composition generally known to-day as Webster's Dictionary? A. It is not the composition generally known to-day as Webster's Dictionary. 1922

Re-D. Q. 41. I presume a book which was merely based upon the obsolete expired 1847 edition and not based upon the subsequent famous copyrighted editions would be still less the literary composition understood to-day by the general public as Webster's Dictionary? A. I should not say still less understood by the general public; I don't think the general public would distinguish between the two. 1923.

Re-D. Q. 42. You have spoken, in answer to Mr. Bean's question as to the authority of a dictionary made in a supposed manner and based upon an early Webster dictionary would have if made by competent scholars. Were you speaking of intrinsic merit or of reputation for accuracy and accepted authority? A. I was speaking of intrinsic merit. 1924

Re-D. Q. 43. Does the average person, whom we have termed the "man on the street" know the name of the respective publishers of the well-known reference works called Webster's Dictionary, the Standard Dictionary and the Century Dictionary? A. I doubt whether one such man in ten knows the publisher of the Standard Dictionary; I think most men likely to buy the Century are of such intelligence and standing that

1925

Edwin D. Mead—Re-direct.

they would naturally know the publishers; and most people know that the Merriams have always been the publishers of the Webster Dictionaries—most scholarly people, I mean.

Re-D. Q. 44. How about the man in the street?

A. I doubt whether the man in the street remembers that the Webster's Dictionaries are published by the Merriams.

1926

Re-D. Q. 45. If utilizing the reputation which Webster's Dictionaries, as published by the Merriams have acquired as reliable and authoritative reference works, some other publisher should issue a new dictionary and sell it as a Webster's Dictionary, would or would not the average purchaser be deceived into thinking he was obtaining the book published by the Merriams?

(BY MR. BEAN): Objected to since it appears from the witness' testimony that he is not and does not claim to be competent to answer the question.

1927

A. I think he would be deceived.

Re-D. Q. 46. And what effect would the fact that he did not know that Merriam was the name of the publisher of the famous Webster Dictionary have in that regard, if any? A. I think the fact that Merriams' name was not on the imprint would not affect lots of people as thinking they were getting

1928

what we ordinarily speak of as Webster's Dictionaries when we mean the Merriam editions.

Re-D. Q. 47. If a man wanted to buy a Webster's Dictionary to-day because he thought the reputation and authority of Webster's Dictionary was greater than that of the Standard or Century Dictionaries, and therefore preferred it, and instead of being given a current edition of Webster's Dictionary as published by the Merriams was given a new dictionary which was merely based upon the expired 1847 edition, would he be

getting the book that had the reputation which induced him to buy it? A. He would not.

Re-D. Q. 48. You have stated in answer to Mr. Bean, that a reference in the form of "Webster's Dictionary," would not be understood to refer to the specific book entitled Webster's Condensed Dictionary, published and first copyrighted by the Merriams in 1884. What book would be generally understood as intended by that reference if made to-day? A. Webster's International Dictionary. 1930

Re-D. Q. 49. Published by whom? A. G. & C. Merriam Company.

Re-D. Q. 50. In other words, such a reference as authority refers to the large or Unabridged Dictionary and not to one of the small abridgments? A. It does.

Re-D. Q. 51. In speaking of cautionary explanations, you stated in answer to x Q. 34, that a statement in this form: "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors," might be a sufficient explanation if clearly and distinctly brought to the attention of the purchaser. Were you referring to an explanation as to the publisher or an explanation sufficient to prevent confusion between different editions of Webster's Dictionary? A. The latter. The purchaser would know then,—would at least be informed what he was getting,—and if he chose to take it, that is his affair. 1931

Re-D. Q. 52. How would such a statement inform the purchaser, for example, that he was getting the 1847 edition and not one of the later editions which have been recently in current use? A. It would not inform him, but it would raise the question critically and undoubtedly lead him to inform himself before purchasing. 1932

RE-CROSS EXAMINATION by Mr. Bean:

Re-x Q. 53. If an average purchaser, using that

1933

Edwin D. Mead—Re-cross.

description in the same sense that it is used by Mr. Hale in Re-D. Q. 39, were to call for a Webster's Dictionary to-day, and were to get the abridged dictionary published by the Merriam Company in 1884, and entitled "Webster's Condensed Dictionary," which dictionary was an abridgment of the 1847 edition of Webster's Dictionary, or of the 1864 edition of Webster's Dictionary, both published by the Merriam Company, and on both of which the copyright has now expired, would he, in your opinion, obtain the same literary composition that he had in mind to buy?

1934

(BY MR. HALE): Objected to as incompetent, irrelevant and immaterial, and as not within the issues; and further because the question incorrectly recites that the book named was an abridgment of the 1847 edition, which is not true, said book being an abridgment made in 1884, of the last preceding edition of the famous Webster's Unabridged Dictionary.

1935

(BY MR. BEAN): The question is insisted upon, since it is identical with Re-D. Q. 39 asked by Mr. Hale, except that it substitutes Webster's Condensed Dictionary, issued in 1884, for a reprint of an "obsolete expired edition," and since it describes said edition of 1884 as an abridgment of either the 1847 edition or the 1864 edition of Webster's Unabridged Dictionary, said 1864 edition being in 1884 the latest revised unabridged Webster's Dictionary of the Merriam Company.

1936

A. He would not if, as is certainly true, there are subsequent editions of the condensed or abridged dictionary.

(DEPOSITION CLOSED)

EDWIN D. MEAD.

William B. Clarke—Direct.

1937

WILLIAM B. CLARKE, a witness called on behalf of the complainant, having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation. A. William B. Clarke; 63; Weston, Mass.; bookseller.

Q. 2. What is the name of your company? A. 1938
W. B. Clarke Company.

Q. 3. Located here in Boston? A. Yes.

Q. 4. What is your position with the company?
A. President and treasurer.

Q. 5. How long have you been engaged in the buying and selling of dictionaries as part of the book trade? A. About 45 or 46 years.

Q. 6. Have you bought and sold Webster's Dictionaries during that period? A. I have.

Q. 7. In the book trade what book is meant by the term "Webster's Dictionary" when called for by the average purchaser? A. The latest edition by whatever name it may be called. 1939

Q. 8. The latest edition of the dictionary published by whom? A. G. & C. Merriam Company.

Q. 9. And for how long has this been true? A. I don't remember any time when it was not true since I have been in the business.

Q. 10. I presume you have sold many copies of Webster's Dictionary? A. I have.

Q. 11. And with whose book have you always filled orders for Webster's Dictionary? A. The Merriam book. 1940

Q. 12. Did you ever receive a complaint that the purchaser expected to receive some other book? A. Never.

Q. 13. How would an order for a Webster's Dictionary given to-day be properly filled? A. That is a question which needs a little explanation. All things being equal, we should send the largest and

1941

William B. Clarke—Direct.

best edition then in existence published by the Merriams, my doubt being that the possibility of the Webster's Collegiate being the book desired.

Q. 14. Who publishes the Webster's Collegiate Dictionary to which you have referred? A. G. & C. Merriam.

Q. 15. If the order was for a small Webster's Dictionary, what book would be intended? A. We would risk the Collegiate.

Q. 16. You mean the Webster's Collegiate of G. & C. Merriam Company? A. G. & C. Merriam Company.

Q. 17. Would an order for Webster's Dictionary given to-day be understood to refer to Webster's Dictionary of 1847 upon which the copyright has expired? A. No, sir.

Q. 18. What would be the fact in that regard as to an abridgment of the 1847 recently made by new publishers and new editors who had never previously had any connection with the regular series of Webster's Dictionaries? A. Unless specifically called for, it would not be considered in filling the order.

Q. 19. During all the period of your acquaintance with them, what has been the reputation and standing of Webster's Dictionaries? A. Generally very high, with the slight exception for a predilection for Worcester in Boston and vicinity.

Q. 20. Does the reputation and standing of the Webster's Dictionaries to which you have referred have any effect upon their sales? A. I should think so, very decidedly.

Q. 21. The Webster's Dictionary of great reputation to which you have referred is the Webster Dictionary published by whom? A. G. & C. Merriam.

Q. 22. When you speak of the reputation and standing of Webster's Dictionaries, do you refer to the current editions of the Merriams in use in

William B. Clarke—Direct.

1945

recent years or of the early editions published at least more than 50 years ago? A. I refer to the most recent editions in all cases.

Q. 23. From your experience as a bookseller, would it be possible for a new dictionary to be published and sold under the title of Webster's Dictionary by third persons, which would not be confused with the Webster Dictionaries published by G. & C. Merriam Company now in current use and which would not be to a greater or less extent benefited in the way of increased sales from the reputation and standing which the Merriam Company's copyrighted editions of Webster's Dictionary have acquired under that name? A. Impossible to be otherwise. 1946

Q. 24. What, in your opinion, is the minimum money value of the good will and reputation of the Merriam Company's Webster Dictionaries?

(By MR. BEAN): Objected to as incompetent and immaterial and because it does not appear that the witness is competent to answer the question. 1947

A. Impossible to estimate without a knowledge of the capital invested, average cost of production per copy, and gross sales per annum.

Q. 25. Can you not place a minimum figure in view of your knowledge of the Webster Dictionaries in the market? 1948

(By MR. BEAN): Same objection and because the witness has stated that it is impossible without certain data to furnish an estimate.

A. It would only be a guess and not of value.

Q. 26. Do purchasers generally know the name of the publisher of the Webster's Dictionary of great reputation, which you say has always been

1949

William B. Clarke—Cross.

published by the Merriams? A. Only a portion of the customers remember the actual name of the publisher of the book.

Q. 27. Can you say whether or not, in spite of this fact, the average purchaser does mean the dictionary published by the Merriam Company when the asks for a Webster Dictionary? A. The average purchaser does mean such edition or editions.

1950

CROSS-EXAMINATION by Mr. Bean:

x Q. 28. In answer to Q. 7 you have said that by the term "Webster's Dictionary," it meant the latest edition by whatever name it may be called. Would, then, an order for the Webster's Dictionary in your mind ever mean, unless the edition were specified, Webster's Condensed Dictionary, published by the Merriam Company first in 1884? A. It would not.

1951

x Q. 29. Ever since you have been in the book-selling business, have you been a customer of the Merriam Company? A. I think we have always bought direct.

x Q. 20. Have you ever carried any Webster Dictionaries except those published by the Merriam Company? A. Only second-hand copies or possibly a small pocket dictionary which may have been called Webster, but which we did not carry habitually.

1952

x Q. 31. So that naturally in filling orders for Webster's Dictionaries you have, without question, filled them with dictionaries published by the Merriam Company? A. Naturally, because we declined to buy other Webster dictionaries than those published by the G. & C. Merriam Co.

x Q. 32. In other words, you have and have always had a predilection and decided preference for the Webster dictionaries published by the Mer-

riam Company over the Webster dictionaries published by anyone else? A. Yes.

x Q. 33. Have you any idea how many different Webster Dictionaries have been published by others than the Merriam Company? A. I don't know.

x Q. 34. If you were carrying in stock Webster Dictionaries published by both the Merriam Company and other publishers, would you be able to tell how to fill an order which simply called for a Webster Dictionary? 1954

(By MR. HALE): Objected to as incompetent, irrelevant and immaterial, because not calling for any act, fact or declaration, but for mere guess as to what the witness would do under certain supposed circumstances not shown to exist.

A. Not a suppositious case, because my policy has been consistently to carry only the Webster Dictionaries published by the G. & C. Merriam Company, except for the slight variation already alluded to. 1955

x Q. 35. Do you know whether among booksellers generally Webster's Dictionaries, published by others than the Merriam Company, are carried in stock and sold along with those of the Merriam Company or without those of the Merriam Company? A. I do not know. 1956

x Q. 36. You are familiar, I presume, with the copyright laws and their operation?

(By MR. HALE): This line of question objected to as incompetent, irrelevant and immaterial, as calling for the conclusions of the witness on matters of law, and as not proper cross-examination. This objection is to apply to subsequent similar questions without being repeated.

1957

William B. Clarke—Re-direct.

A. My knowledge of this very large subject is very slight.

x Q. 37. Do you not know that after the lapse of a certain term of years copyright protection expires? *

1958

(By MR. HALE): This question is further objected to upon the ground that the defendant admits it is not publishing a copy of Webster's Dictionary on which the copyright is expired, and the question is therefore irrelevant and immaterial.

1959

A. I have knowledge of the varying limits as to length of copyright and I happen to have knowledge of the recent decision in the case of White, Smith & Co. and Goff, whereby Judges Putnam, Lowell and Aldrich held that there was a question as to assignment and as to whether an assignment of a copyright could be made after the first period of 28 years.

x Q. 38. You know, however, that period of copyright protection is provided by statute, do you not? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Hale:

1960

Re-D. Q. 39. What is the basis of your preference or predilection for the Merriam Webster Dictionaries which you have expressed? A. Simply as the original producers and because I value the quality of their present production.

Re-D. Q. 40. Have the so-called Webster's Dictionaries of any other publisher than the Merriams acquired the standing, reputation and good will which the Merriams' Webster Dictionaries enjoy? A. Not to my knowledge.

Re-D. Q. 41. You stated that a reference merely in the form of Webster's Dictionary would not be understood to refer to the 1884 edition of Web-

John Quincy Adams—Direct.

1961

ster's Condensed Dictionary which was issued by the Merriams; why is this? A. I don't think I understand that question.

Re-D. Q. 42. Did you mean to say that the phrase Webster's Dictionary would not be understood to refer to Webster's Condensed Dictionary of 1884, which was a book issued in that year by the Merriam Company?

(By MR. BEAN): Objected to, as the witness has already testified that he understands a reference to Webster's Dictionary to mean the latest edition of the Webster's Dictionary published by the Merriams.

1962

A. I still mean that the latest edition would be always considered; the question of that exact date and that exact title I am not sure, because I am not sure whether there has been a later edition of that particular book or not.

1963

(DEPOSITION CLOSED.)

William B. Clarke.

JOHN QUINCY ADAMS, a witness called on behalf of the complainant, having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by M. A. Hale:

1964

Q. 1. Please state your name, age, residence and occupation. A. John Quincy Adams; 28; Brookline, Mass.; publisher.

Q. 2. How long have you been engaged in the publishing business? A. Approximately 10 years.

Q. 3. During that period have you also purchased and sold dictionaries? A. Yes, we have

1965

John Quincy Adams—Direct.

been the New England sales office for G. & C. Merriam Company.

Q. 4. What is the name under which the G. & C. Merriam Company's dictionaries are sold? A. Webster's Dictionaries.

Q. 5. Has your experience been such that you know what book is meant by the average purchaser of dictionaries when he refers to or calls
1966 for Webster's Dictionary? A. It has.

Q. 6. What book is commonly intended when a Webster's Dictionary is called for? A. Usually the last edition published by the G. & C. Merriam Company.

Q. 7. What are the reputation and standing of the Webster Dictionary as a book of reference?
A. Webster's Dictionary to-day, as during the last sixty years, has the very highest standing, being the authority of some courts and having recognition as the leading dictionary by a majority of the
1967 educators.

Q. 8. Who is the publisher of the Webster's Dictionary which has the standing and reputation which you have stated? A. G. & C. Merriam Company of Springfield, Mass.

Q. 9. State whether or not a reprint of the 1847 edition of Webster's Dictionary would be the book intended by an order given to-day for a Webster's Dictionary? A. It would not be intended, and
1968 should we fill an order from the 1847 edition, it would in 99 cases out of 100 dissatisfy the customer.

Q. 10. Have you any knowledge as to the use of the Merriam Company's Webster Dictionaries in the schools of this country? A. I know it has a very large use in the school systems of America: our own office supplies many of the large school systems in New England with the Merriam "Webster."

John Quincy Adams—Direct.

1969

Q. 11. Are you aware of the fact that in recent years publishers other than the Merriams have issued dictionaries using the name "Webster's" in the title? A. I am, because our salesmen are constantly running across customers who have purchased Webster's dictionaries not published by the Springfield company, and in the majority of cases these people state that they thought they were buying a Merriam Webster.

1970

(By MR. BEAN): Objected to as being plainly hearsay.

Q. 12. State, if you know, whether or not any of these so-called Webster Dictionaries not published by the Merriams, or in the regular series, have acquired any standing and reputation of their own as authoritative reference books? A. I have never seen any evidence to show that the books referred to in question have any standing as authorities.

1971

Q. 13. What is the general nature and character of these so-called Webster Dictionaries not published by the Merriams?

(By MR. BEAN): Question objected to as too vague and indefinite to admit of an answer.

A. My impression is that the dictionaries referred to are for the most part reprints and are practically books which are out of date.

1972

Q. 14. What effect upon the sales of a dictionary under the name of Webster has the good reputation, standing and authority which Webster's Dictionary has acquired? A. I don't believe I understand that question.

Q. 15. You have stated that Webster's Dictionary has acquired a high standing, reputation and authority. What effect upon sales does that repu-

1973

John Quincy Adams—Direct.

tation have? A. That reputation has a very beneficial effect upon the sales, and means, from the selling standpoint, a very large asset.

Q. 16. State, if you know, the minimum money value of the good-will and reputation symbolized by the name "Webster" as applied to a dictionary?

1974

(By MR. BEAN): Objected to as irrelevant and immaterial, also because it does not appear that the witness is in possession of such detailed information as would be necessary for him to give an opinion, approximating the fact.

A. I should say such good-will would be worth upwards of \$500,000.

Q. 17. From your knowledge of the dictionary business, would it or would it not be possible for some other publisher to publish a new dictionary calling it Webster's Dictionary, which book would not benefit in the way of sales by the good-will and reputation which you have said the Merriam Company's Webster's Dictionaries now enjoy? A. From my knowledge of the dictionary business during ten years, I should say that any book published by others than the Springfield Merriams would profit tremendously by the use of the Webster name and reputation.

1976

Q. 18. Can you explain just why that is so? What I want is a statement from your experience of how the name Webster affects prospective purchasers of dictionaries, and what effect it has in effectuating sales? A. The name Webster, through the efforts of the G. & C. Merriam Company for more than half a century, has become synonymous with the highest possible scholarship and the best in every quality. This reputation which the name has inspires customers with con-

fidence, which is a very large aid to the sale of Webster's dictionaries, because the firm of G. & C. Merriam Co. is very widely known and favorably known.

Q. 19. Which are the books with this reputation, the current Webster Dictionaries of the Marriam Company or the expired edition of 1847? A. To-day the current edition of the Merriam Company.

Q. 20. Would a new book issued by publishers 1978 who have never heretofore had any connection with the established series of Webster Dictionaries but which was based to a greater or less extent upon the expired 1847 edition, be the book which to-day has the reputation which you have stated belongs to Webster's dictionaries? A. This would not be the book which has such reputation.

Q. 21. Upon what particular editions does the present day reputation of Webster Dictionary mainly rest? A. My judgment is it rests largely 1979 on editions published since 1890.

Q. 22. Have you, in your dictionary business, in any way met with or felt the competition of other so-called Webster Dictionaries which were not issued by the Merriams? A. Yes, we have felt this competition to the damage of our own sales in several ways.

Q. 23. Please state in your own way what you have observed as to this competition and in the way in which it has been carried on? A. This competition has affected the results of our salesmen 1980 in different parts of New England by reason of the fact that people needing dictionaries have purchased books published by others than the Merriam Company and have stated to our salesmen that they bought these books supposing they were the regular legitimate series which have for so many years been known as Webster's Dictionaries. We have felt the competition keenly in cer-

1981

John Quincy Adams—Cross.

tain centers where these other books have been advertised; our customary spring and fall advertisements have been in some instances rendered valueless by reason of a large distribution of these other books. A large number of people have told our salesmen that there is general dissatisfaction in their community with the purchase of Webster's Dictionaries, and on inquiry the salesmen

1982 have found that the books purchased have invariably been those issued by some concern other than G. & C. Merriam; this general discontent has affected the whole dictionary market.

(By MR. BEAN): I object to so much of the answer as is hearsay and ask that it be stricken out.

Q. 24. Do your salesmen make these reports to you in the ordinary and regular course of your

1983 business? A. Yes, these reports are made for the most part daily.

CROSS-EXAMINATION by Mr. Bean:

x Q. 25. If the Merriam Company's dictionaries were the only dictionaries having the name Webster in their titles, you would undoubtedly sell more dictionaries of the Merriam Company, wouldn't you? A. We undoubtedly would sell more dictionaries.

1984 x Q. 26. That is to say, competition, leaving out of account the legality of it, hurts your sales? A. Competition of this kind which creates dissatisfaction among the customers and creates a lack of confidence with the dictionary market generally, is harmful. Our office has always welcomed good, honest, straightforward competition, which arouses interest and stimulates the market.

x Q. 27. But you do not think there would be any good, honest competition on the part of anybody

who puts the name "Webster" in the title of the dictionary; that's the idea, isn't it? A. I do not feel there is good, honest competition on the part of anyone who sells a competing article under a misrepresentation.

x Q. 28. Is it necessarily in your mind misrepresentation to put the name "Webster" in the title of the dictionary? A. Customers who feel they are buying a Merriam Webster, and then buy a dictionary published by someone else, tell my salesmen that it is a misrepresentation. 1986

(By MR. BEAN): I object to the answer and move that it be stricken out.

x Q. 29. I now repeat my last question. A. I think it is.

x Q. 30. I suppose you do not pretend to testify in this case upon its legal aspects, but simply from your position as a distributor of Webster's Dictionaries as published by the Merriams; is that right? A. Yes, that's about the size of it, with this added: that we are pretty well identified with the publishing world, handling other books besides the dictionary in our business, and because of that I probably know more about the dictionary market than the average man. 1987

x Q. 31. Are you familiar with the decisions of the courts with reference to the rights of the public to use the name Webster in the title of dictionaries, and the limitation placed upon such rights? 1988

(By MR. HALE): Protest is again made against this obviously incompetent and irrelevant line of examination upon matters of law which can have no effect but to needlessly swell the record.

A. I can't say that I am.

x Q. 32. In your book business you have never

1989

John Quincy Adams—Cross.

handled any other Webster Dictionaries than those published by the Merriams, have you? A. I never have.

1990 x Q. 33. And when you say, as you do in your direct examination, that when a Webster's Dictionary is called for the book intended is usually the last edition published by the Merriam Company, you base that opinion upon your business experience as handling Merriam's Dictionaries exclusively? A. I base that opinion upon the fact that we always ship Merriam's Dictionary, and I have yet to hear the first complaint.

x Q. 34. You advertise yourselves as agents for and distributors of Merriam's Webster's Dictionaries? A. I can't recall the phrasing of the ads exactly.

x Q. 35. You hold yourselves out as agents for the Merriam Company? A. Yes.

1991 x Q. 36. Then naturally you would expect orders you would receive for the Merriam Company's books, wouldn't you? A. That doesn't necessarily follow.

x Q. 37. You never, in fact, had an order that you know of except for the Merriam Company's Webster Dictionary? A. I can't recall that we have at this moment.

1992 x Q. 38. All your knowledge of the dictionary business upon which you have based your opinions have come from your agency for the Merriam Company, has it not? A. I should say it comes from conducting the publishing business for ten years.

x Q. 39. In answer to one of Mr. Hale's questions you said that in your opinion, if you should fill an order with an 1847 edition, it would in 99 cases out of 100 dissatisfy the customer; that opinion, I suppose, is based upon the fact that the 1847 edition is antique now? A. It is not only antique, but it is misleading. Language changes.

John Quincy Adams—Cross.

1993

x Q. 40. Don't you think that the reputation of the Merriam Webster's Dictionary is to some extent based upon the reputation and work of Noah Webster? A. I should say Noah Webster played his part in building up the reputation of the Webster Dictionary.

x Q. 41. But you think his position as regards the reputation now is secondary and insignificant? A. I shouldn't want to place Noah Webster in his niche of fame. 1994

x Q. 42. You are not, however, prepared to say that some part of the reputation of the Webster Dictionaries is not now due to Noah Webster? A. I presume Noah Webster played his part in building up the reputation of the Webster Dictionary.

(DEPOSITION CLOSED.)

John Quincy Adams.

1995

IT IS HEREBY STIPULATED by and between counsel for the respective parties that the affidavit of Andrew S. Draper, filed upon the motion for a preliminary injunction herein and verified the 18th day of December, 1911, shall be read and inserted into the record for use at final hearing with the same force and effect as if the same had been regularly taken before an Examiner of this Court by way of question and answer, but subject to all objections upon the ground of relevancy or materiality.

1996

(ADJOURNED WITHOUT DATE.)

(Printing of Special Examiner's certificate is omitted, by consent.)

1997

Affidavit of Andrew S. Draper.

STATE OF NEW YORK, }
 County of Albany, } ss.:

ANDREW S. DRAPER, being first duly sworn, deposes and says:

I reside at Albany, New York, and am the Commissioner of Education of the State of New York. I have held that position since April 1st, 1904. I have been engaged in educational work since 1886. I was State Superintendent of Public Instruction in this State from 1886 to 1892. I was Superintendent of Instruction of the Cleveland, Ohio, public schools from 1892 to 1894. I was President of the University of Illinois from 1894 to 1904, since which time I have been Commissioner of Education in New York State.

I am familiar with the principal standard dictionaries used in this country.. The Webster Dictionaries are looked upon as the leading standard dictionaries of this country, though, of course, there are other dictionaries of recognized value and standing. The Webster dictionaries to which I refer have always been published by the Merriams of Springfield, Mass. I have been acquainted with their Webster dictionaries practically all my life. I have personally owned a Webster's Unabridged Dictionary for forty years, that is to say, that dictionary and its successor the Webster's International Dictionary, all published by the Merriams. Webster's Dictionary has acquired an authority by reason of general use and the common approval of intelligent people. The high authority of Webster's Dictionary to-day rests most largely upon the edition called Webster's International Dictionary. That is the book now generally understood and intended by the name Webster's Dictionary.

The last published dictionary in the series published by the Merriam Company and their predecessors would have greater authority than a new dictionary bearing the title Webster, issued by other publishers and produced by other editors.

Affidavit of Andrew S. Draper.

2001

I have no hesitation in saying that such would be the fact at the beginning although of course a new book could doubtless be produced by other publishers which might win its way to acceptance and an authority and standing of its own, upon its merits, but it would not start with the authority and prestige which have been established for the Merriams' Webster's Dictionary and for that reason it would be wrong to call it Webster's Dictionary. It is my belief that the universal association of the Merriam firm with the Webster's dictionaries and the widely acknowledged excellence of their work, give their dictionaries an authority which no new dictionary could possibly have upon first publication.

2002

The educational department of the State of New York authorized the purchase of Webster's dictionaries for use in the schools of the state as a standard authority. The book meant by Webster's dictionaries in such authorization is the book published by the Merriams. The Webster's Dictionary published by the Merriams is now used in the schools of New York, because at the present time it is the Webster's Dictionary which is recognized as having authority. I should add by way of explanation, so that no warrantable inference shall be drawn, that this Department does not undertake to determine what dictionaries shall or shall not be used in the schools of the State. The way in which the Department approval has come to be expressed for the Webster Dictionaries is consequent upon the fact that the State appropriates money to School libraries and other libraries for the purchase of approved books, and the Webster dictionaries are among the approved books. I mean, of course, the Webster dictionaries published by G. & C. Merriam Company.

2003

2004

ANDREW S. DRAPER.

Subscribed and sworn to before me }
this 18th day of December, 1911. }

HONORE H. GREENE,

[SEAL.]

Notary Public.

2005 DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

2006	<div>G. & C. MERRIAM COMPANY, Complainant,</div> <div>vs.</div> <div>CUPPELS & LEON COMPANY, Defendant.</div>	Equity 8-161.
2007	<div>G. & C. MERRIAM COMPANY, Complainant,</div> <div>vs.</div> <div>SYNDICATE PUBLISHING COMPANY, Defendant.</div>	Equity 8-162.

TESTIMONY IN REBUTTAL.

SPRINGFIELD, MASSACHUSETTS.

July 9th, 1912.

11 o'clock A. M.

APPEARANCES:

- 2008 JOHN F. JENNINGS, Esq., Special Examiner.
WILLIAM B. HALE, Esq.,
For Complainant.
STRONG & CADWALADER,
Attorneys for Syndicate Publishing Co.;
Lauren Carroll as Counsel.
GOULD & WILKIE,
Attorneys for Cupples & Leon Co.;
Lauren Carroll as Counsel.

C. O. Sylvester Mawson—Direct.

2009

DEPOSITION taken on behalf of complainant in rebuttal taken before Special Examiner, John F. Jennings, at the office of G. & C. Merriam Company at Springfield, Mass., at 11 o'clock A. M. on Tuesday, July 9th, 1912, pursuant to notice.

IT IS STIPULATED between counsel for the respective parties that the testimony of all witnesses produced at this examination shall be taken down stenographically by a competent stenographer appointed by the special examiner and subsequently transcribed and reduced to typewriting. It is further stipulated that the signatures of all of said witnesses shall be waived. 2010

C. O. SYLVESTER MAWSON, a witness called on behalf of Complainant, having been first duly cautioned and sworn, testified as follows:

2011

By Mr. Hale:

Q. 1. Will you please give your full name, age, residence and occupation? A. Name, Christopher Orlando Sylvester Mawson; age, 41, reside at 40 Maynard Street, Springfield, Mass., occupation, editor.

Q. 2. Are you regularly employed upon the editorial staff of G. & C. Merriam Company, complainant in this case? A. I am.

Q. 3. What experience have you had in lexicographical work? A. Somewhat extended. I have been associated with the three leading dictionaries in this country, namely the Century Dictionary, in connection with which I edited the Sanskrit and Oriental terms; the Standard Dictionary with which I was connected for some time as associate editor; Webster's New International Dictionary with which I am now serving my second term, that is to say, I rejoined their staff 2012

2013

C. O. Sylvester Mawson—Direct.

about 18 months ago. Moreover for the last three years, I have been associated with the New English Dictionary, having been appointed by Sir James Murray of Oxford, as Consulting Specialist of Oriental terms. The official title of that work is "The New English Dictionary" edited by James L. H. Murray, LL.D., Clarendon Press of Oxford. It is commonly spoken of as "The Oxford Dictionary." Perhaps the best testimony of my lexicographical skill and reliability is the fact of my being entrusted with the expert work in the present case of G. & C. Merriam Company.

2014

Q. 4. In your work in connection with the Oxford Dictionary, did you have the final say in the department that came under your supervision?

2015

A. The final say in all matters connected with the Oxford Dictionary lies with the editor in chief, Sir James Murray, but I may say I have it before he finally passes on it; I am the expert that gives final revision to all the terms entrusted to me.

Q. 5. Have you examined a dictionary involved in this case, variously known as the "Webster's New Standard Dictionary," "Webster's New Illustrated Dictionary" and "Webster's New Century Dictionary" and the "Crown Dictionary"?

A. I have, carefully, each and all of them.

2016

Q. 6. And have you compared that dictionary with various other dictionaries of the English language with a view to ascertaining its source or origin? A. I have very thoroughly.

Q. 7. Please describe briefly the examination and comparison which you made to that end? A. A careful reading of the defendant's book convinced me that—

MR. CARROLL: Objected to as not responsive.

(Witness continuing): That it was based on some English work. I may say that I conducted this

matter in quite an independent manner, that Messrs. G. & C. Merriam Company did not even tell me what they had done, but gave me the book and told me to go ahead. I, first of all, as I have explained to you, went through the book very carefully and critically, and then thinking from the nature of the book, that I might be able to come across some one work on which the editor or compiler of the said dictionary had drawn rather extensively I examined every English Dictionary, on which I could lay my hands, not only in the Springfield Library, but the New York City Library and the Boston Public Library. I am aware that similar steps were taken to discover this in England. 2018

Q. 8. What books did you examine in the course of this search? A. Before beginning to prepare my exhibit, I may say I examined every single volume of every English Dictionary on which I could lay my hand, without exception, regardless of age or time of publication. 2019

Q. 9. Did you succeed in finding any dictionary, which from a comparison, you can say was the source or original form of the dictionary here in question?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, and as calling for a conclusion of the witness, who has not been sufficiently qualified as an expert. 2020

A. Ultimately I succeeded in finding the dictionary from which the defendant's book was unquestionably taken.

Q. 10. Have you that book here present? A. I have.

Q. 11. Will you please produce it?

Witness produces two books.

2021

C. O. Sylvester Mawson—Direct.

- Q. 12. Will you please state what you discovered in respect to these two books, relative to their identity with the defendant's dictionary herein involved? A. The first book I came across, which after a superficial examination convinced me that I had at last struck the right book, on which presumably Mr. Roe had based his work is entitled the "STUDENT'S IMPERIAL DICTIONARY of the English language to which are added selected lists of proper names with phonetic pronunciation, and abbreviations in common use, with their meanings. Edited by Rev. E. D. Price, F. G. S." The publishers' imprint is "New York, G. P. Putnam & Sons." "London, George Newnes, Limited." The above is the entire contents of the title page. This same book I discovered was published in England under the title of the BRITISH EMPIRE DICTIONARY of the English Language, to which are added selected lists of proper names with phonetic pronunciations with abbreviations in common use, with their meanings. Edited by Rev. E. D. Price, F. G. S." Publishers' Imprint is "London, George Newnes, Limited, Southampton Street, The Strand." The above is an exact copy of the title page of the "British Empire Dictionary."

2023

- Q. 13. Are you able to state that the two books produced, to wit: The Student's Imperial Dictionary and the British Empire Dictionary are identical in literary contents?

2024

MR. CARROLL: Objected to unless the witness shows how he came to such conclusions.

A. As the books will show, they are page for page, and word for word absolutely identical with the single exception that the title "THE STUDENT'S IMPERIAL DICTIONARY" has been substituted for the "BRITISH EMPIRE DICTIONARY" and in the

American edition the name G. P. Putnam & Sons is added to the publishers' imprint. I would say that the American edition bears the same printer's imprint as the English one.

Q. 14. Indicating what? A. Indicating that they were both printed by the same firm of printers, namely, Love & Wyman, Ltd., Queen Street, London, W. C. They are absolutely identical, and the books show that they have been printed from the same plates. 2026

Q. 15. Do you mean by your last reference to the printer's imprint that the printed sheets were imported into this country for use in the American edition? A. That must have been so.

Q. 16. The two books produced by the witness and identified by him are offered in evidence and are marked respectively "Complainant's Exhibit, British Empire Dictionary," and "Complainant's Exhibit, Student's Imperial Dictionary." 2027

MR. CARROLL: The introduction of these books in evidence is objected to on the ground that they are irrelevant and immaterial.

Q. 17. Who is George Newnes, the name which appears in the publisher's imprint, if you know? A. George Newnes, Limited, was founded by George Newnes. George Newnes began life as a newspaper boy, then got into the publishing business and began publishing "Tit-Bits" and afterwards "The Strand." Outside the publication of "Tit-Bits," he doesn't cut any great figure on the other side as a publisher. This I know as an Englishman. 2028

Q. 18. You are English then? A. I am.

Q. 19. Did you compare these two books, to wit, The Student-Imperial Dictionary and the British Empire Dictionary and the defendant's diction-

2029

C. O. Sylvester Mawson—Direct.

ary, to wit,—Webster's New Century Dictionary, or Webster's New Standard Dictionary?

MR. CARROLL: Objected to as irrelevant and immaterial.

A. I compared word for word from A to Z.

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Q. 20. Did you mark the two books produced in any way to indicate in any part the result of your comparison? If so, please explain your markings in these books. A. I did. I will explain the markings in the Complainant's Exhibit, the British Empire Dictionary. The terms marked with a blue tick indicates those that are to be found in defendant's dictionary. The terms that are not so marked are not to be found in defendant's book. Generally speaking, in the case of all these terms that are marked in blue, the term itself and the definition has been appropriated by the editor of defendant's dictionary. In certain instances the whole definition, which I may term the whole of "Price's" definition has not been taken, but certain omissions have been made. In these cases, I have enclosed in brackets the passage not appropriated by the editor of defendant's dictionary.

031

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Q. 21. Did you mark in any way complainant's exhibit, The Student's Imperial Dictionary, or did you make your comparison solely with the British Empire Dictionary? A. I confined my markings entirely to the British Empire Dictionary.

Q. 22. Have you here present a copy of defendant's dictionary, which you compared with the British Empire Dictionary, as stated by you? A. I have.

MR. HALE: The book produced by the witness is offered in evidence, and is marked "Complainant's Exhibit, Copy of Defendant's Book Compared with British Empire Dictionary."

C. O. Sylvester Mawson—Direct.

2033

Q. 23. The copy of defendant's book which you used is one under the title of "Webster's New Century Dictionary" was it not? A. It was.

Q. 24. You have told how you marked that copy? A. In the case of defendant's book, as the amount of matter appropriated from the English book was so considerable, I confined my markings to the dissimilarities.

MR. CARROLL: I object to the form of all witness' answers stated as they are solely on conclusions about the matter which he could obviously have no knowledge, namely,—that any matter or any definition was appropriated by Mr. Roe from the English book, or any other book. The only knowledge or information which this witness can have is that which may be derived from an examination of the books, from which examination he may state, if it be a fact that the definitions of one book are identical with the definitions of another book. It has already been shown by the testimony of Professor Peck that a great number of the words and definitions in defendant's dictionaries are taken bodily from the 1847 edition of Webster's dictionary, and it is for the court alone to determine whether or not, to use the words of the witness, Mr. Roe appropriated Webster's dictionary or appropriated Price's dictionary, also whether or not Price himself did not in the first place appropriate Webster's Dictionary.

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A. As I observed, I confined my markings to the dissimilarities. These markings are as follows: A small red cross in the margin indicates that the term is a new one so far as Price's book is concerned. In definitions where a new sense has been

2037

C. O. Sylvester Mawson—Direct.

added by the defendant's editor a red vertical mark has been made in the margin. For example, the word "freighter" in the defendant's book has the following as part of its definition, "A vessel for conveying freight." This sense is not in Price's book at all, consequently in order to be as fair as possible, I have marked it in red as explained. In certain other cases verbal changes or

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paraphrases have been made. These I have indicated by a blue marginal line. In certain other words, for example "Honor" in which the English form "our" has been changed to "or," I have indicated such change by underlining the "or," with blue pencil.

Q. 25. When you spoke of defendant's editor as having appropriated designated matter from the British Empire Dictionary, do you mean any more than that the matter in the two books is identical?

2039

A. I mean absolutely and literally what I say, he has appropriated that word by word.

MR. CARROLL: You cannot know it.

THE WITNESS: If you like, Mr. Carroll, and Mr. Hale has no objection, I would like you to take the English book, namely, the British Empire Dictionary, and open at any page you like and I will take the defendant's book and read it aloud to you and you can judge for yourself the extent of the appropriation.

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Q. 26. When you speak of matter in defendant's book as having been appropriated from the British Empire Dictionary, is the designated matter in those cases absolutely identical? A. It is absolutely identical.

Q. 27. That is what you mean by that statement?

A. That is what I mean by that statement.

Q. 28. When you speak of Price's Dictionary, what book do you mean? A. By Price's dictionary-

ary I mean both the British Empire Dictionary and the American edition of the same work, known as, the Student's Imperial Dictionary published by Putnam.

Q. 29. In complainant's Exhibit, "Copy of Defendant's book compared with the British Empire Dictionary, where no markings appear in connection with particular words and definitions, what is indicated? A. That defendant's dictionary and Price's dictionary are identical. 2042

Q. 30. Did you prepare for the purpose of exhibiting the amount of identity and the difference between defendant's dictionary and the British Empire Dictionary an exhibit which would show the matter prominently to the eye? A. I did.

Q. 31. Will you please produce that exhibit? A. I do.

Q. 32. Did you personally compare this exhibit? A. I did.

Q. 33. Will you please explain how it was prepared and what it shows? For example what is the matter that appears upon the left hand half of the page in this exhibit, headed "The British Empire Dictionary"? A. The matter on the left hand side of the page headed "The British Empire Dictionary," is a photographic copy from the book named. 2043

Q. 34. In other words the left hand half of the first page in this exhibit is a photolithographic copy of page 127 of the British Empire Dictionary? A. That is correct. 2044

Q. 35. And the left hand half of each and every succeeding page of this exhibit is likewise the photo-lithographic copy of the designated page of the British Empire dictionary which you have produced? A. That is true.

Q. 36. How did you select these pages for the purpose of photographing and comparing them? A. I purposely selected the pages which had been

2045

C. O. Sylvester Mawson—Direct.

chosen by Professor Peck for his exhibit and in addition to them I added six more pages.

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Q. 37. Please explain what is the matter which appears on the right hand half of each and every page of this exhibit under the heading "Webster's New Illustrated Dictionary?" A. The matter on the right hand side of the page headed "Webster's New Illustrated Dictionary," is the matter in defendant's dictionary which corresponds with the matter in the British Empire Dictionary. That is, for instance, taking the first page, which is from "Acoustics" to "acrotism" in the British Empire Dictionary. I consulted the terms in defendant's dictionary corresponding entirely or as near as possible, as will be seen from "acoustic" to "acrostic" the three words "Acrostical," "acrotic" and "acrotism" not being included in defendant's book.

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Q. 38. Is the matter from defendant's dictionary, upon the right hand side of the page, also a photo-lithographic copy from the dictionary itself? A. Not from the dictionary itself. It was made in this way. I cut out the pages from defendant's book to correspond with the pages of the British Empire Dictionary. These were pasted on a sheet of paper, and then photographed, so in a sense it is, although not taken from the book itself it is without any change as it is here produced.

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Q. 39. In other words you cut up defendant's book into columns necessary to get the pages the size of the British Empire Dictionary? A. That is so.

Q. 40. You then photographed the columns cut from the defendant's book? A. That is correct, the wider space between them will show it is not taken page for page from the book.

Q. 41. Did you photograph all the matter consecutively in the order in which it appears in de-

fendant's book on the pages which are selected?

A. Absolutely.

Q. 42. And these pages are the pages from defendant's book which Professor Peck selected and used in his exhibit, in which he compared defendant's book with Webster's Dictionary of 1847?

A. They include the whole of Peck's selection and six pages additional.

Q. 43. Please explain what the matter printed 2050
in red in this photolithographic copy indicates and what is indicated by the matter printed in black? A. The matter in red indicates the passages in the two books that are identical. The passages that are not identical, or which do not occur in defendant's book at all for example, are in black. I will explain this point by the quotation, first from the British Empire Dictionary and secondly from Webster's New Illustrated Dictionary on page 1 of this exhibit. British Empire Dictionary, "Acrostic n. A composition usually inverse, in which the first or last letters of the lines or other letters taken in order form a motto, a verse, name or word." From Webster's New Illustrated Dictionary, I now quote "acrostic n. A composition usually inverse in which the first or last letters of the lines or other letters taken in order form a motto, a verse, name or word." These definitions, as you will see, are identical and consequently are printed in red. 2051
Another illustration; from the British Empire Dictionary I quote the following:—"bosom n. the breast, clothing covering the breast; the affections or passions; something likened to a bosom, as a sustaining surface, inmost recess, etc. Adj. Pertaining to the bosom, intimate, cherished, belonging to, worn on the bosom. V. t. To place or harbor in the bosom, cherish, conceal." From Webster's New Illustrated Dictionary I quote:—"bosom n. The breast, clothing covering the 2052

2053

C. O. Sylvester Mawson—Direct.

breast; the affections or passions; something likened to a bosom, as a sustaining surface, inmost recess, etc. Adj. Pertaining to the bosom, intimate, cherished, belonging to, worn on the bosom. V. t. To place or harbor in the bosom, cherish, conceal." These also were printed in red to indicate identity.

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Q. 44. When matter appears printed in black in the left hand half of the page devoted to "The British Empire Dictionary" it means that matter does not appear in the defendant's book Webster's New Illustrated Dictionary. Is that correct? A. That is correct.

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Q. 45. When matter appears in black upon the right hand half of the page devoted to the photolithographic copy of defendant's dictionary, it means that that matter does not appear in the British Empire Dictionary, is that correct? A. That is also correct.

Q. 46. The exhibit produced and explained by the witness is now offered in evidence and the same is received and marked "Complainant's Red Letter Exhibit, Showing Identity of Defendant's Dictionary with British Empire Dictionary."

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MR. CARROLL: Objected to as entirely incompetent, immaterial and irrelevant, and the latter line of the testimony is objected to on the further ground that it is improper rebuttal, this subject having been in no way touched upon in the *prima facie* proofs of complainant. Evidence at this time and at this stage of the litigation offers no opportunity for rebuttal by the defendant and is therefore obviously unjust and improper.

MR. HALE: Complainant is taking rebuttal proofs; such rebuttal testimony is obviously and necessarily limited to a rebuttal of matters brought forward by the defend-

C. O. Sylvester Mawson—Direct.

2057

ant. Defendant called a witness, Professor Peck, who produced an exhibit and gave testimony purporting to show that defendant's dictionaries were based upon and taken from Webster's dictionary of 1847. This exhibit and the testimony offered and put forward by this witness will show that defendant's dictionaries were a copy almost literally from the English dictionary of Price, published in England under the title of the "British Empire Dictionary" a copy of which has been offered in evidence. The purpose of this exhibit and of the testimony of this witness is to aid and facilitate the court in making the comparison between the books produced and offered. 2058

MR. CARROLL: The testimony of this witness is apparently offered, not in rebuttal but to prove an affirmative fact which up to this point has not been alleged in complaint, namely, that defendant's book is largely taken from an English book alleged to have been edited and prepared by the Rev. E. D. Price. This affirmative proof is in no way rebuttal by the complainant to evidence offered by the defendant through the witness Peck, to the effect that the dictionaries of defendant contain so much matter which is absolutely identical with the 1847 and other earlier dictionaries as to be unquestionably based upon these Webster's dictionaries; and furthermore if it were shown that the dictionary of defendant was absolutely identical in every particular with the so-called Price dictionary, that would still be no proof that the Price dictionary itself was not absolutely and unquestionably based upon Webster's diction- 2059 2060

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C. O. Sylvester Mawson—Direct.

ary of 1847, so that anything identical with it would also be surely based upon the Webster's dictionary of 1847. The objection to this testimony as rebuttal is therefore renewed on the ground that it is irrelevant and immaterial and on the further ground that it is not rebuttal but affirmative proof.

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MR. HALE: Complainant refrains from arguing the point at this time. If counsel will be patient we will introduce all necessary evidence when we get to it. It is suggested, however, that this testimony is obviously a proof of the negative of the affirmative fact pleaded by defendant and sought by defendant to be established through the testimony of Professor Peck that defendant's book is based upon Webster's dictionary of 1847 or any other addition of Webster's dictionary.

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MR. CARROLL: It is hereby stipulated that all the objections made by counsel for defendant in the above exchange of statements may be considered as taken and reserved to all questions along this line.

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Q. 47. Did you make an actual count of the words and terms used in the British Empire Dictionary, designated by you under the name of "Price's" and the words and terms used in the defendant's dictionary, designated by you "W. N. C. D." standing for "Webster's New Century Dictionary"? A. Yes, an actual count of both were made.

Q. 48. Did you type the results of that count with a view to showing how much similarity and how much variance there was between these two books? A. I did.

C. O. Sylvester Mawson—Direct.

2065

Q. 49. Will you please read your count into the record?

(Witness reads the count into the record as follows):

ANALYSIS
OF PRICE'S DICTIONARY AND WEBSTER'S NEW
CENTURY DICTIONARY

	Number of terms in Price	Terms common to Price and W. N. C. D.	Terms in Price omitted in W. N. C. D.	New terms (not in Price) added to W. N. C. D.	Dissimilar definitions		Identical definitions in Price and W. N. C. D.
					more or less resembling Price	containing senses not covered in Price	
A	3,875	2,941	934	40	21	8	2,912
B	2,291	1,900	391	13	4	6	1,890
C	4,339	3,006	1,333	27	15	4	2,987
D	2,106	1,697	409	6	8	5	1,684
E	1,493	1,268	225	7	6	5	1,257
F	1,765	1,459	306	10	13	17	1,429
G	1,407	1,103	304	8	4	2	1,097
H	1,424	1,120	304	19	4	3	1,113
I	1,631	1,407	224	5	17	4	1,386
J	276	203	73	4	1	8	194
K	265	182	83	1	4	4	174
L	1,100	872	228	17	9	10	853
M	1,785	1,469	316	25	16	18	1,435
N	641	515	126	2	11	11	493
O	765	624	141	19	2	11	611
P	2,954	2,417	537	39	29	26	2,362
Q	216	179	37	0	0	2	177
R	1,557	1,400	157	12	17	16	1,367
S	3,665	3,185	480	35	34	36	3,115
T	1,758	1,564	194	17	42	40	1,482
U	235	199	36	2	4	3	192
V	612	543	69	4	11	6	526
W	626	576	50	6	13	17	546
X	36	31	5	2	0	0	31
Y	103	88	15	1	0	4	84
Z	213	182	31	2	2	0	180
	37,138	30,130	7,008	323	287	266	29,577

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Q. 50. On the left side of the typewritten page from which you have read, I notice the letters of the alphabet "A, B, C, D, E," etc. What does that indicate? A. These are the letters of the alphabet corresponding with the two dictionaries in question.

Q. 51. You mean the alphabetical division? A. The alphabetical divisions of the two dictionaries in question.

Q. 52. In the first column of the above typewritten page under the heading, "Number of terms

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C. O. Sylvester Mawson—Direct.

in Price," I observe certain figures following the letters of the alphabet, what does that mean? A. These figures refer to the entire number of dictionary terms in each letter of the alphabet.

Q. 53. You mean the number of terms in each alphabetical division of Price's dictionary? A. That is all the head words in bold face type.

2070 Q. 54. How many terms by actual count did you thus discover in the British Empire Dictionary, termed "Price's Dictionary"? A. From A to Z inclusive, the total number of terms in Price's dictionary is 37,138.

Q. 55. How many terms did you find common to Price's dictionary and defendant's dictionary by actual count? A. 30,130.

2071 Q. 56. How many terms did you find by actual count are contained in Price's dictionary, that is to say the British Empire Dictionary, which terms are omitted and do not appear in defendant's dictionary? A. I found a total of 6,008 terms in Price's dictionary which do not appear at all in defendant's dictionary.

Q. 57. How many terms did you find in defendant's Webster's New Century Dictionary, by actual count, which are not contained in the British Empire Dictionary? A. 323.

2072 Q. 58. How many dissimilar definitions did you find in defendant's Webster's New Century Dictionary which more or less resemble the definitions in the British Empire Dictionary? A. 287.

Q. 59. How many definitions did you find in defendant's Webster's New Century Dictionary, more or less dissimilar from corresponding definitions in the British Empire Dictionary and containing senses not covered in the latter dictionary? A. 266.

Q. 60. Out of the 30,138 identical terms which are common to both defendant's Webster Century Dictionary and the British Empire Dictionary, did

C. O. Sylvester Mawson—Direct.

2073

you find the definitions contained in Defendant's Webster's New Century Dictionary to be identical and literally word for word the same? A. Yes, to the total number of 29,577.

Q. 61. Did you prepare a summary statement of these figures? A. I did.

Q. 62. Will you please read the same into the record. A. I will and it is as follows:

SUMMARY.

2074

TERMS.

Number of terms in W. N. C.	
D. taken from Price.....	30,130
Number of Price's terms	
omitted in W. N. C. D....	7,008
<hr/>	
Total number of terms in	
Price	37,138
Number of terms common to	
both Price and W. N. C. D.	30,130
New terms added to W. N.	
C. D.	323
<hr/>	
Total number of terms in	
W. N. C. D.....	30,453

Percentage of terms taken
from Price 98.94

Percentage of new terms
added to W. N. C. D..... 1.06

2075

DEFINITIONS.

Number of definitions taken	
bodily from Price.....	29,577
Number more or less resembling	
Price (some having	
only a single word	
changed)	287
Number containing new	
matter	266
Number of new terms de-	
fined	323
<hr/>	
	30,453

Percentage of definitions taken
from Price 98.06
viz., identical defs..... 97.12
more or less resembling94

98.06

2076

Percentage of new matter
added to W. N. C. D... 1.94

2077

C. O. Sylvester Mawson—Direct.

Q. 63. From actual count please state in percentages the number of terms contained in defendant's Webster's New Century Dictionary which are identically the same as the terms contained in the British Empire Dictionary? A. 98.94%.

Q. 64. And what percent of new terms were there in defendant's book? A. 1.06 per cent.

2078

Q. 65. What percentage of definitions in defendant's book did you find were identical with the definitions in the British Empire Dictionary? A. 98.06 percent.

Q. 66. What percentage of new definition matter did you find in defendant's book which was not contained in the British Empire Dictionary? A. 1.95 per cent.

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Q. 67. Did you personally make this count and calculate these percentages, as shown by the summary which you have read into the record? A. I did.

Q. 68. And you know them to be correct? A. I know them to be correct.

Q. 69. This count embraces the entire book? A. That is so.

2080

Q. 70. And it was not limited simply to the complainant's red letter exhibit which covered the precise amount covered by Dr. Peck's exhibit plus six additional pages? A. The count is not in any sense of the word an estimate, it is an actual count made direct from the book itself.

MR. CARROLL: I object to the count as immaterial and irrelevant and as not the best evidence, the books speaking for themselves.

Adjourned till afternoon.

C. O. Sylvester Mawson—Direct.

2081

TWO O'CLOCK, P. M.

IT IS HEREBY STIPULATED, that depositions *de bene esse* on behalf of complainant in rebuttal for final hearing, may be taken at Chicago on the twelfth day of July at 11.30 A. M. of that day at the office of Messrs. Reilly & Britton Company. The witnesses to be examined are J. F. Murphy and C. W. Taber, F. K. Reilly and S. C. Britton. It is further stipulated that said depositions may be taken before any Notary Public or any officer duly qualified to administer oaths and take depositions under the revised statutes of the United States. 2082

(TESTIMONY RESUMED.)

By Mr. Hale:

Q. 71. Did you also count the words in Dr. Peck's exhibit and make a comparison of the words in Price's book embraced in Peck's exhibit in corresponding portions? A. Yes, I did. 2083

Q. 72. How many words did you find in Dr. Peck's exhibit, that is in the portion of defendant's dictionary in which he made comparison with Webster of 1847. A. 6,973.

Q. 73. How many of these identical words did you find embraced in the corresponding portion of the British Empire Dictionary? A. 6,834.

Q. 74. How many words were supplied by the editor of defendant's dictionary which were not in the British Empire? A. 139. 2084

Q. 75. Are those 139 clearly new and original matter? A. They are not.

Q. 76. What is the fact? A. 72 of them are mere revisions of Price's matter.

Q. 77. How many are new matter? A. 67 are new, absolutely new.

Q. 78. Did you make a calculation and ascertain the per cent. of the material included in Dr. Peck's

2085

C. O. Sylvester Mawson—Direct.

exhibit which is absolutely identical with matter in the British Empire Dictionary? A. I did.

Q. 79. What per cent. of identical matter did you find? A. Over 99% of the matter presented by Dr. Peck has been bodily taken from Price's dictionary.

Q. 80. What was there, if anything, identifying the British Empire Dictionary as the source of
2086 defendant's dictionary?

MR. CARROLL: Objected to as calling for conclusion of the witness.

Q. 81. I will add to my question, I want you to point out the things in the books themselves. A. The introduction of common errors.

Q. 82. Anything else? A. The existence in defendant's books of so many errors which are to be found in Price's book.

2087 Q. 83. Can you give me a list of such instances? A. A few that occur to me, are "prevalence" characterized as an adjective instead of a noun, both in Price's and defendant's dictionary. "Steere" is misprinted in Price's book for "steeve" as is also "steering" for "steaving." These errors have been copied into defendant's dictionary. The same curious error in cross references occurs in Price's as in defendant's book, namely "engulf same as ingulf." "Ingulf, same as engulf." In
2088 addition to these errors I was also struck with the way that the editor of defendant's book copied the same illustrations as Price. For instance: "aliquant, as 8 is an aliquant part of 25"; "aliquot, as 8 is an aliquot part of 24"; "alliteration, apt alliteration's artful aid."

"Brace,	Tit-}
thus:	Bits}

The humor of this lies in the fact that "Tit-

Bits" is the well known publication of George Newnes, the original publisher of the dictionary.

"Cube as $5 \times 5 \times 5 = 125$, cube of 5."

"Cube root, as 5 of 125."

"Cubo-cube, as $729 = 3^6$ "

"Ham, as Tottenham."

In addition to these, Price's peculiarities of typography have been copied very closely in defendant's book. For example in both books each definition begins with a small letter instead of the more usual capital. There is also the same want of uniformity in printing the name of a genus, etc. Some times it is put in italics and at others in Roman. For example "darnel lolium temolentum" is in italics in both books, in "deer" "cervus" is in Roman; in "dog" "canus" is in Roman, in "fly," "musca domestica" is in italics; "nettle," "urtica" is in Roman; in "tiger," "felis" is in Roman. 2090

Another remarkable point in both books is the phrases are marked as nouns, For example,

Adam's Ale, n.

Gelatine process n.

Improper fraction n.

Magic lantern n.

Nitric acid n.

Inclined plane n.

Zymotic disease n.

2092

Close corporation n.

Fore-fathers' Day n.

Forensic medicine n.

Haversain Canals n.

Magna Charta n.

Passion Sunday n.

United Brethren n.

Q. 84. Is that a correct thing to do? A. It is not.

2093

C. O. Sylvester Mawson—Direct.

Q. 85. In other standard dictionaries of recognized authority, such as the Century Dictionary or the Standard Dictionary, is that practice followed? A. It is not.

Q. 86. Did Webster's dictionary of 1847 or any other edition, follow that practice? A. It did not.

2094

Q. 87. To the extent that defendant's books follow that practice they do not follow Webster, is that correct? A. They do not follow Webster nor any other dictionary to my knowledge.

Q. 88. In comparing this British Empire Dictionary with defendant's dictionary did you find any instances where the English form of spelling terms as shown in the British Empire Dictionary had been changed in the defendant's book and the American form adopted? A. I did note such.

2095

Q. 89. Did you count them? A. Yes, I did. I found by actual count that changes have been made in 189 of such terms, while in 75 others the change from the English to the accepted American form has not been made.

Q. 90. Can you produce a list of these words to which you have referred and the count of which you have given? A. I can.

Q. 91. Please do so.

The list produced and read by the witness is as follows:

ORTHOGRAPHY

2096

The spelling adopted by Webster's New Illustrated Dictionary compared with that of Webster's Unabridged (1847)

Only such Websterian forms have been inserted in this Table as are approved by Webster's New International Dictionary and other American authorities.

[The forms marked by a dagger do not occur at all in Webster of 1847]

Syndicate book	British dictionaries	Webster's preferred form	
abetter†	abetter [O. CH.]	abettor	
accoutre	accoutre [C. O. CH.]	accouter	
accoutrements	accoutrements [C. O. CH.]	accouterments	2098
adze†	adze [C. O. CH.]	adz	
aide-de-camp†	aide-de-camp [C. O. CH.]	aid-de-camp	
appal†	appal [C. CH. O.]	appall	
axe†	axe [C. CH. O.]	ax	
banian	banian [CH.]	banyan	2099
boulder	boulder [C. CH. O.]	bowlder	
brazier	brazier [C. CH.]	brasier	
cauldron	cauldron [CH.]	caldron	
carburetted†	carburetted [C. CH. O.]	carbureted	
cornelian	cornelian [C.]	carnelian	2100
chartographer†	chartographer [C.]	cartographer	
chartography†	chartography [C. O.]	cartography	
cheque	cheque [C. CH.]	check	

[C. = Cassell's.

CH. = Chamber's.

O. = Ogilvie's.]

2101

C. O. Sylvester Mawson—Direct.

	Syndicate book	British dictionaries	Webster's preferred form
	cotillion	cotillion [CH.]	cotillon
	coulter	coulter [C. O.]	colter
	councillor†	councillor [C. CH. O.]	councilor
2102	cyclopædia	cyclopædia [C. CH. O.]	cyclopedia
	deflower†	deflower [C. CH.]	deflour
	detector†	detector [O.]	detecter
	diarrhœa	diarrhœa [C. CH. O.]	diarrhea
	despatch	despatch [C. CH. O.]	dispatch
2103	distil†	distil [C. CH. O.]	distill
	dolour†	dolour [C. CH.]	dolor
	dulness†	dulness [C. O.]	dullness
	encyclopædia	encyclopædia [C. CH. O.]	encyclopedia
	faecal	faecal [C. CH. O.]	fecal
2104	fœtal	fœtal [CH.]	fetal
	fœtus	fœtus [CH.]	fetus
	gavotte†	gavotte [C. CH. O.]	gavot
	gaiety	gaiety [C. CH. O.]	gayety

[C. = Cassell's.

CH. = Chamber's.

O. = Ogilvie's.]

Syndicate book	British dictionaries	Webster's preferred form	
<i>gaily</i>	<i>gaily</i> [C. CH. O.]	<i>gayly</i>	
<i>gelatinet</i> †	<i>gelatine</i> [C. CH. O.]	<i>gelatin</i>	
<i>glycerinet</i> †	<i>glycerine</i> [CH. O.]	<i>glycerin</i>	
<i>gramme</i>	<i>gramme</i> [C. O.]	<i>gram</i>	2106
<i>guerilla</i> †	<i>guerilla</i> [C. CH.]	<i>guerrilla</i>	
<i>embitter</i> †	<i>embitter</i> [C. CH. O.]	<i>imbitter</i>	
<i>embosom</i> †	<i>embosom</i> [C. CH. O.]	<i>imbosom</i>	
<i>encase</i>	<i>encase</i> [CH.]	<i>incase</i>	
<i>ensnare</i> *	<i>ensnare</i> [CH.]	<i>insnare</i>	2107
<i>instilt</i>	<i>instil</i> [C. CH. O.]	<i>instill</i>	
<i>enthrall</i>	<i>enthrall</i> [C. CH.]	<i>inthrall</i>	
<i>enwrap</i>	<i>enwrap</i> [C. CH.]	<i>inwrap</i>	
<i>joust</i>	<i>joust</i> [C. O.]	<i>just</i>	
<i>kilogramme</i>	<i>kilogramme</i> [C. CH.]	<i>kilogram</i>	2108
<i>ledger-line</i>	<i>ledger-line</i> [O.]	<i>leger-line</i>	
<i>maugre</i>	<i>maugre</i> [C. CH. O.]	<i>mauger</i>	
<i>mullein</i>	<i>mullein</i> [C.]	<i>mullen</i>	

[C. = Cassell's. CH. = Chamber's. O. = Ogilvie's.]

	Syndicate book	British dictionaries	Webster's preferred form
	ochre	ochre [C. CH. O.]	ocher
	oyes	oyes [C. O.]	oyez
	pædobaptism†	pædobaptism [C. O.]	pedobaptism
2110	phosphuretted†	phosphuretted [C. CH. O.]	phosphureted
	purr	purr [C. CH. O.]	pur
	reinforce	reinforce [C. CH.]	reenforce
	reinforcement	reinforcement [C. CH.]	reenforcement
	reynard	reynard [C. CH.]	renard
2111	rencontret†		rencounter
	rouble	rouble [C. O.]	ruble
	sarsenet†	sarsenet [CH.]	sarcenet
	savannah†	savannah [C.]	savanna
	scathet†	scathe [C.]	scath
2112	sillibub†	sillibub [CH.]	sillabub
	sylvan	sylvan [CH.]	silvan
	syrup	syrup [C. CH. O.]	sirup
	skilful†	skilful [C. CH. O.]	skillful

[C. = Cassell's.

CH. = Chamber's.

O. = Ogilvie's.]

Syndicate book	British dictionaries	Webster's preferred form	
subpoena	subpoena [C. CH. O.]	subpena	
sulphuretted†	sulphuretted [C. CH. O.]	sulphureted	
tailage	tailage [CH.]	tallage	
titbit	titbit [CH.]	tidbit	2114
wilful†	wilful [C. CH. O.]	willful	
woful	woful [C.]	woeful	
wofully	wofully [C.]	woefully	
zaffre†	zaffre [C. CH. O.]	zaffer	

[C. = Cassell's.

CH. = Chamber's.

O. = Ogilvie's.]

2115

CROSS REFERENCES

that follow the plan of British dictionaries, as opposed to that of
Noah Webster and present-day American dictionaries

Syndicate Book	British dictionaries	Webster's preferred form	
BANYAN. See banian.	BANYAN. See banian. [CH.]	BANYAN.	
CALDRON. See cauldron.	CALDRON. See cauldron. [CH.]	CALDRON.	
CARTOGRAPHER, -IC, -Y. See CHARTOGRAPHER, etc.	CHARTOGRAPHER, -IC, -Y. See CHARTOGRAPHER, etc. [C. O.]	CARTOGRAPHER, etc.	2116
DISPATCH. Same as despatch.	DISPATCH. Same as despatch. [CH. C. O.]	DISPATCH	
FECAL. Same as faecal.	FECAL. Same as faecal. [CH. C. O.]	FECAL.	
FETAL. Same as foetal.	FETAL. Same as foetal. [CH.]	FETAL.	
FETUS. See foetus.	FETUS. See foetus. [CH.]	FETUS.	
GRAM. See gramme.	GRAM. See gramme. [C. O.]	GRAM.	
INCASE. Same as encase.	INCASE. Same as encase. [CH. C.]	INCASE.	
PEDOBAPTISM. Same as paedobap- tism.	PEDOBAPTISM. Same as paedobap- tism. [C. O.]	PEDOBAPTISM	
RENARD. Another form of reynard.	RENARD. See reynard. [CH. C.]	RENARD.	

[C.=Cassell's. CH.=Chamber's. O.=Ogilvie's.]

2117

C. O. Sylvester Mawson—Direct.

- Q. 92. Will you please explain the list which you
 —have produced and give the meanings of the mark-
 ings and abbreviations? A. The list is arranged
 in three columns; column 1 consisting of terms
 spelled as in the Syndicate Book; column 2 con-
 sists of the same terms as spelled in English dic-
 tionaries, it being marked in which dictionary
 each instance occurs, the "C" standing for Cas-
 2118 sell's, "Ch" for Chamber's and "O" for Ogilvie's
 Imperial Dictionary, (English form). The third
 column shows the same words as they appear in
 Webster's, by Webster's I mean in the Webster
 1847 edition and all later issues and which form
 is still retained today in our latest edition, name-
 ly, the New International, and which may be
 recognized as the accepted American form.

2119

MR. CARROLL: I object to the last part of
 the statement and move that it be stricken
 out.

WITNESS: The terms marked by a dagger
 do not occur at all in Webster's Unabridged
 Dictionary of 1847, but they are included in
 this list, as showing that they follow the
 British form of orthography, differing from
 the American form.

2120

- Q. 93. Please explain the cross references which
 you have noted at the end of the above list. A.
 These cross references are also arranged on the
 same plan as in the preceding list. A cross re-
 ference is invariably made to the form preferred
 by any dictionary in question and in this list I
 show that in its cross references the Syndicate
 Book refers from the accepted American form,
 and certainly the form approved and used by
 Noah Webster, and refers to the English form of
 the word under which form it gives its definition.

Q. 94. Did you personally prepare this list of
 words? A. I did.

C. O. Sylvester Mawson—Direct.

2121

Q. 95. And it truly shows the fact? A. It does.

Q. 96. Of your own knowledge? A. Of my own knowledge.

Q. 97. Did you discover these peculiarities in your examination of defendant's book before you had located the source of defendant's book in Price's British Empire Dictionary? A. I did.

Q. 98. Did they have anything to do with the opinion which you have expressed that defendant's dictionary was based upon an English dictionary? A. They confirmed me in my opinion that the book was undoubtedly from an English source. 2122

Q. 99. Were they the cause of the search you made among English publications? A. Together with other causes they were. As a further illustration of defendant's departure from Webster's preferred form of spelling I call attention to the word "reinforce." In Webster's of 1847 this word is spelled "reenforce" and Webster makes this comment, "it is written also reinforce, but not so correctly." "Reinforce" is the accepted British form. 2123

Q. 100. Did you discover any other indications which to your mind pointed to an English source of the literary matter contained in defendant's dictionary? A. I did. I noticed that in defendant's book some of the words which in English end in "re" are spelled "er" but in making some of these changes from the English to the American form the editor omitted to change the alphabetical position of the word as changed. For example, "luster," "odor" and sepulcher" have obviously been changed from the English form in "re" with the result that they appear out of alphabetical order. When changed in defendant's book "luster" comes immediately after "lustration"; "odor" in defendant's book comes 2124

2125

C. O. Sylvester Mawson—Direct.

between "odorous" and "o'er" and "sepulcher" comes after "sepulchral." The change to the American form has clearly thrown them out of alphabetical order.

2126

Q. 101. Do they appear in the same order, notwithstanding the change of spelling as they do in Price's British Empire Dictionary? A. They are in exactly the same order without that change of spelling in Price's book.

Q. 102. They appear in exactly the same order as in Price's Dictionary? A. They do.

Q. 103. Did you discover any other instances of that sort? A. I noticed other instances of orthographical changes without making a corresponding changes in the alphabetical place.

2127

Q. 104. Please give them or some of them. A. The words in "ize" in which the British form spells them in "ise" and the American form in "ize", changes have been made without the corresponding changes in the vocabulary position on the instances following, "liberalize, materialize, methodize, moralize, analyze, symbolize."

Q. 105. Do all of those words appear in the same position in defendant's dictionary as they do in Price's British Empire Dictionary? A. They do.

2128

Q. 106. And due to the changes from the English form of spelling to the American form of spelling they therefore appear out of alphabetical order in the defendant's dictionary, is that true?

A. That is true.

Q. 107. What would have been the fact in that regard if the editor of defendant's book had been working from Webster's Dictionary 1847 edition or any other edition of Webster's Dictionary? A. They would have been in correct alphabetical order.

Q. 108. Did you discover any other facts from the contents of defendant's book pointing to its origin in Price's British Empire Dictionary? A. Yes.

Q. 109. Please state it. A. I noted a number of what I shall call mixed definitions, that is, the definition in the defendant's book is made up of two wholly different definitions in Price's book.

Q. 110. Have you a list of such instances? A. I have prepared some such instances I came across.

Q. 111. Will you please read the same into the record. A. I do so as follows:

MIXED DEFINITIONS.

Webster's New Century Dictionary

boots (), *n.* the servant in a short boot, for women; a child's knitted boot.

citadel (), *n.* a fortress; a being cited.

congenial (), *adj.* kindred; from a liquid to a solid state by cold; *v.i.* to concreate by cold.

corn (), *n.* a horny excrescence as with salt in grains.

ophthalmoscopy (), *n.* exsection or extraction of the eye.

rhyme (), *n.* the correspondence measure or time in poetry or prose; meter; verse.

British Empire Dictionary

boots (), *n.* the servant in an hotel who cleans the boots of the guests.

bootie (), *n.* a half-boot, or short boot, for women; a child's knitted boot.

citadel () *n.* a fortress, a castle.

citable (), *adj.* capable of being cited.

congenial (), *adj.* kindred; pleasant and sympathetic; cognate.

congeal (), *v.t.* to change from a liquid to a solid state by cold; *v.i.* to concreate by cold.

corn (), *n.* a horny excrescence on the toe, or foot.

corn (), *v.t.* to preserve or cure, as with salt in grains.

ophthalmoscopy (), *n.* examination of the eye.

ophthalmotomy (), *n.* dissection or extraction of the eye.

rhyme (), *n.* the correspondence of the sound of the last word or syllable of one verse or line to the sound of the last word or syllable of another. * * *

rhythm (), *n.* agreement of measure or time in poetry or prose; metre; verse.

2133

C. O. Sylvester Mawson—Direct.

Q. 112. In each case in the above list the two definitions which have been mixed have occurred in the British Empire Dictionary in close proximity, is that correct? A. The list clearly shows that.

Q. 113. And the mixing of them has resulted in manifest absurdity in the definitions in defendant's dictionary? A. The mixing makes the defendant's dictionary absolutely meaningless.

2134

Q. 114. Do any of these cases occur in Webster's dictionary of 1847 or in any other edition? A. They do not.

2135

Q. 115. Dr. Peck in his testimony on behalf of defendant expressed the opinion that a 10% variation from Webster's form of spelling would not, in his opinion, indicate non-conformity to Webster's Dictionary and Websters's principles. Where there is a difference between Webster's form of spelling, that is to say, the American form and the English form of spelling, what is the percent in which the defendant's editor has followed the Webster or American form, and what percent has he failed to follow it? A. He has followed the American form of spelling in 60% of the terms and failed to follow it, or in other words has retained the British form in 40%.

2136

Q. 116. Did you find any palpable errors in defendant's dictionary which were not also contained in Price's British Empire Dictionary? A. I did.

Q. 117. Will you please point out some of them? A. I noted the following: "Flabbily," definition is printed twice. "Litchi," definition is incomplete. It reads:—"A tree producing a." Price has "a tree producing a fruit (Lichi) much esteemed in China." "microbe, *adj.*," for "microbic," "micromillimeter," "1,000,000,000th. of a meter," three ciphers too many, "pharmaceuist"

for pharmacist, "strabatomy" for strabotomy, "tickling" for "ticking," "transmutation" for transmigration, "valenciennes" for valediction. "verify" under this word "fulfil" is spelled as in Price's, whereas in the defendant's dictionary (in the vocabulary) it has been changed to "fulfill" which is the American form," "vituperation" for vituperative.

Q. 118. What, if anything, can you say as to the British character of the definitions in defendant's book? A. The English applications of many of the definitions is a very noticeable feature of defendant's book, and this, as I have explained before, is one of the reasons which led me first of all to believe that the defendant's dictionary was derived from an English source. I have prepared a list of some of the words which I have come across. This list does not affect to be exhaustive but will illustrate my point. It is as follows:—

2138

2139

COMPARE THE FOLLOWING DEFINITIONS.

Noting Their British Character and Style of Capitalization.

Webster's New Illustrated Dictionary

acre, n. a superficial measure of land containing, in Great Britain, the United States and the Colonies, 4,840 sq. yds.

Webster's Unabridged (1847)

acre, n. A quantity of land, containing 160 square rods or perches, or 4,840 square yards. This is the English statute acre. The acre of Scotland contains 6,130 2-5 square yards. The French *arpent* differs not greatly from the English standard acre. The Roman *jugerum* was 3,200 square yards.

2140

advowson, n. the right of presentation to a benefice.

advowson, n. In *English* law, a right of presentation to a vacant benefice; or, in other words, a right of nominating a person to officiate in a vacant church.

antiphon, n. a chant or hymn rendered alternately by two choirs, as in English cathedral services.

antiphon, n. The chant or alternate singing in choirs of cathedrals.

2141

C. O. Sylvester Mawson—Direct.

Webster's New Illustrated Dictionary
 billiards, n. a game played on a rectangular, cloth-covered slate table, 12 ft. x 6 ft. in size, with ivory balls and a cue.

[In the American or French game the standard table is 10 x 5. The standard English table is 12 x 6.]

2142

chalice, n. a cup; a Eucharist cup.

chapel, n. a subordinate place of public worship; a place of worship in a palace, institution, &c.; a nonconformist place of worship; an association of journeymen in a printing house.

2143

chemist, n. one skilled in chemistry; a dealer in drugs and medicines; an analyst.

christen, v. t. to baptize in the name of the Holy Trinity; give a Christian name to.

2144

Churchman, n. an adherent of the Established Church; an Episcopalian.

Webster's Unabridged Dictionary (1847)

billiards, n. A game played on a rectangular table, covered with a green cloth, with small ivory balls, which the players aim to drive into hazard-nets or pockets at the sides and corners of the tables, by impelling one ball against another, with maces, or cues, according to certain rules of the game.

Chalice, n. A cup or bowl; usually, a communion-cup.

chapel, n. A house for public worship, erected separate from a church; primarily, a private oratory, or house of worship belonging to a private person. 2. In England, a place of worship for dissenters. 3. A printer's work-house; said to be so called because printing was first carried on in a chapel. Also, an association of workmen in a printing-office.

chemist, n. A person versed in chemistry; a professor of chemistry.

christen, v. t. 1. To baptize, or rather to baptize and name; to initiate into the visible church of Christ by the application of water; *applied to persons*. And as a name is given to the persons in the ceremony, hence, 2. To name; to denominate; *applied to things*. *Prædict.*

churchman, n. An ecclesiastic or clergyman; one who ministers in sacred things. 2. An Episcopalian, as distinguished from a Presbyterian or Congregationalist, &c.

Webster's New Illustrated Dictionary
churchwarden, n. in the Anglican Church, one of two officers chosen at Easter in every parish to attend to the secular affairs of the church, and to act as the legal representatives of the parish; a long clay pipe.

Webster's Unabridged Dictionary (1847)
church-warden, n. A keeper or guardian of the church, and a representative of the parish. Churchwardens are appointed by the minister, or elected by the parishioners, to superintend the church, its property and concerns, and the behavior of the parishioners. For these and many other purposes, they possess corporate powers.

Johnson. Encyc.

2146

deacon, n. the lowest order of the clergy in the Anglican Church; in non-episcopal churches, a layman appointed to assist the minister and manage the temporal affairs of a church.

deacon, n. 1. A person in the lowest degree of holy orders. In the *church of England*, the office of deacons is declared to be to assist the priest in administering the holy communion, and their office in Presbyterian and Independent churches is to distribute the bread and wine to the communicants. In the latter, they are elected by the members of the church.

guard, n. an official in charge of a train.

[Not in Webster (1847). The term is not used in this sense in the United States and should have been characterized as British. Here we say "railroad conductor."] 2147

nepotism [erroneously spelled NEOPTISM], n. a preference shown in bestowing patronage to one's relatives in the church or public service.

nepotism, n. 1. Fondness for nephews. *Addison*.

2. Undue attachment to relations; favoritism shown to nephews and other relations.

shinty, n. hockey; the club used in playing it [Scotch].

[Not in Webster. Cf. Cassell's: "Hockey; the club used in hockey." The term is Scotch and is not used in the United States.] 2148

side, n. bias of a billiard ball.

[Not in Webster. The term in this sense is British. In the United States it is called *English*. The Syndicate book does not include this meaning in defining ENGLISH, n. As a kind of afterthought however, it gives the verb "to English."]]

2149

C. O. Sylvester Mawson—Direct.

Webster's New Illustrated Dictionary
 stole, n. a stola; a long, narrow scarf fringed at the ends, worn by bishops, priests, and deacons of the Roman Catholic Anglican Churches.

surplice, n. the outer linen vestment with wide sleeves, worn by the officiating clergy and choristers of the Roman
 2150 Catholic and Anglican Churches.

verger, n. an official who has care of the interior of an English cathedral.

Yiddish, n. a kind of composite language spoken by foreign Jews in England.

Webster's Unabridged Dictionary (1847)
 stole, n. In the *Roman Catholic church*, a long and narrow scarf with fringed extremities, worn by a priest around the neck, and crossed over the breast in front. *Hook.*

surplice, n. A white garment worn over their other dress by the clergy of the Roman Catholic, Episcopal, and certain other churches, in some of their ministrations.

verger, n. He that carries the mace before the bishop, dean, &c. A pew-opener or attendant at a church.

[Not in Webster (1847). Cf. Chamber's: "a strange compound of very corrupt Hebrew and ancient or provincial German spoken by the commoner Jews—extensively in the East End of London."]

2151

On the left hand side, the definition is given as it appears in Webster's New Illustrated Dictionary, while in the right hand column the same definition is given, as it appears in Webster's Unabridged 1847. Certain comments of my own are contained within the brackets. There are other instances which will be found in another exhibit, such for instance, the word "adder" which is defined in defendant's book as "the popular name for the viper." As the viper is found in England and not in the United States, it follows that the word "popular" refers to British usage. In America "adder" is the popular name of various non-poisonous snakes.

2152

Q. 119. Did you discover in defendant's book instances of cross references to vocabulary heads which do not appear anywhere in defendant's book? A. I did.

Q. 120. Can you give a list of those or illustrations of that? A. I can name some of them.

C. O. Sylvester Mawson—Direct.

2153

Q. 121. Please do so. A. "Aegis, barbary, chamois, encase, ingulf, engulf, intrench, intrust." These terms do not appear in the vocabulary at all, although referred to elsewhere in defendant's book.

MR. CARROLL: I object to this answer as irrelevant and immaterial on the ground that the book itself is the best evidence, and on the further ground that the testimony is not borne out by the book itself. 2154

Q. 122. I observe that you have mentioned the words "engulf" and "ingulf" each of which appear in the vocabulary. Why did you include that in your list? A. For the simple reason that it is a case of double cross reference, the word not being defined under either form.

Q. 123. Will you please point out how the cross references were made in the words which you have mentioned? A. Under "egis" the dictionary says "see aegis," the form "aegis" does not appear, "shammy" appears in the dictionary as a name defined by the one word "chamois," the word chamois does not appear in the book. "Incase" is defined "same as encase," the latter word does not appear. In the dictionary "engulf" is defined "the same as ingulf" and "ingulf," "the same as engulf"; in the dictionary "entrench" is defined "same as intrench" the word "intrench" does not appear; in the dictionary "entrust" is defined "same as intrust" the latter form does not appear. Barbary I cannot at the moment recall. 2155

Q. 124. Does it occur in defendant's dictionary that certain words are referred to in the definitions which words do not appear defined anywhere in the vocabulary? A. I have noted several such. 2156

Q. 125. Can you produce some illustrations covering them? A. Here is a list of some of them.

2157

C. O. Sylvester Mawson—Direct.

WORDS REFERRED TO IN DEFINITIONS BUT NOT INCLUDED IN THE VOCABULARY.

	<i>Omitted Words</i>	<i>Referred to under</i>
	actinolite	strahlite
	aftergrass	fog
	agave	pulque
	birch-oil	Russia leather
2158	couch-grass	twitch-grass
	cryptogamic	lichen
	grass-cloth	ramie
	honey-bird	wattlebird
	horsemanship	equestrian
	lycopodium	club-moss
	nightshade	mandrake
	outfit	trousseau
	photomechanical	Woodbury type
	prepuce	foreskin
	roundness	rotundity
2159	semicircular	roundel
	skysail	moonsail
	solan	gannet
	sphygmometer	pulsimeter
	subdivision	species
	sweating-bath	sudatorium
	unipersonal	Unitarian
	watch-house	roundhouse
	wood-tar	pitacal
	zygote	gamete

2160

Q. 126. Did you compare the literary matter in the defendant's dictionary and that in complainant's exhibit, The Student's Imperial Dictionary and complainant's exhibit, The British Empire Dictionary, with a view to ascertaining, if possible, the source or origin of it? A. I did.

Q. 127. Please describe what you did and the conclusion to which you came?

MR. CARROLL: To so much of the answer

C. O. Sylvester Mawson—Direct.

2161

and the question which calls for a conclusion, I object on the ground he has not qualified as an expert, and the rest of the question I object to as irrelevant and immaterial.

A. After making a comparison of the defendant's dictionary with numerous English dictionaries, I came to the conclusion that the defendant's dictionary or rather the Price's dictionary on which it is based, is an independent production derived from various British sources, certainly not derived in any sense of the word from Webster's. 2162

Q. 128. Did you examine the exhibit prepared by Dr. Peck and offered in evidence by the defendant for the purpose of showing identities and similarities between defendant's dictionary and Webster's dictionary of 1847? A. I did.

Q. 129. Did you personally compare the same pages as Dr. Peck compared in his exhibit for the purpose of showing the true fact in that regard? A. I made such a comparison. 2163

Q. 130. Did you embody the result of that comparison in an exhibit? A. I have done so.

Q. 131. Will you please produce the same? A. Witness produces an exhibit consisting of 32 sheets consecutively numbered and initialed by witness.

Q. 132. Will you please explain how this exhibit is made up and what the various parts of it are? A. I would like to explain at this point that I prepared this exhibit before I was aware of the existence of Price's dictionary. 2164

Q. 135. When did you first become aware of the existence of the British Empire Dictionary? A. I first became aware of the American edition, namely, The Student's Imperial Dictionary, on or about the 27th of April, 1912. On finding this book bearing the name of George Newnes, Ltd., as

2165

C. O. Sylvester Mawson—Direct.

the English publisher, we made effort to procure additional copies in London and in this way became aware that the book had been originally published in England under the titles of the British Empire Dictionary, a copy of this book we received about five or six weeks ago.

2166

Q. 136. What was the period of time covered by your comparison and investigations to which you have already testified, approximately? A. Since about the beginning of April, 1912.

2167

Q. 137. Will you now proceed to explain the last exhibit which you have produced. A. This exhibit is a comparison between defendant's dictionary, Webster's unabridged dictionary of 1847, Chambers' 20 Century Dictionary, and Cassell's English Dictionary. On pages 1 to 18 both inclusive, the printed matter appearing in the column headed "Webster's New Illustrated Dictionary," consists of matter cut from said dictionary of defendant and pasted in the exhibit. The matter appearing in the second column under the heading, "Webster's unabridged dictionary of 1847," consist of pages cut from that dictionary. The matter appearing in the next column headed, "Chamber's 20th Century Dictionary," consists of matter cut from a copy of that dictionary; and the matter appearing in the next column, under the heading, "Cassell's English Dictionary," consists of matter cut from that dictionary and pasted into the exhibit. The matter upon a yellow slip in the last column headed, "Remarks" contains matter of my own, except in so far as it is quoted, from designated books, in which case it consists of matter which I myself accurately copied from the books designated.

2168

At the top of each page of this exhibit I have inserted an explanation of what the markings in the exhibit indicate. This exhibit was prepared

and marked by me personally and I know it to be correct.

I will now explain the markings on pages 1 to 18, both numbers inclusive. The words underscored in red in Webster's unabridged dictionary, Chamber's and Cassell's dictionaries, are words that are identical with the words and corresponding definitions in defendant's book. New terms added to defendant's book and not in Webster's are indicated in the margin with a violet vertical line. In marking this exhibit I have made it a rule to avoid paraphrases entirely, so that the words underscored are absolutely identical with the words appearing in defendant's dictionary. 2170

Q. 138. Are the remarks contained in the column headed "Remarks" true of your own knowledge? A. They are.

Q. 139. In selecting the pages of Webster's dictionary and defendant's dictionary to be incorporated in this exhibit, what pages did you select? A. The same pages as Professor Peck selected for his exhibit. 2171

Q. 140. Please proceed with the explanation of your exhibit. A. Pages 19 to 28, both numbers inclusive follow the same general principles of markings, but contain a closer analysis, in order to show how much matter in the defendant's book is identical with other dictionaries, exclusive of Webster's unabridged. The green lines alone will require additional explanation. In the extracts cut out of defendant's book I have underscored in green the words which are to be found in Cassell's and other English dictionaries. These green markings do not in any way refer to Webster's unabridged. My aim was simply to show that without using Webster's unabridged dictionary at all, a most considerable portion of the defendant's book could be made up. In these pages I have taken no account of paraphrases; had I done 2172

2173

C. O. Sylvester Mawson—Direct.

so it would have been possible to account for virtually every word in the aforesaid manner.

On page 29 of this exhibit will be shown an analysis of these pages which I have more closely marked, namely pages 19 to 28, and in order to prepare this analysis I counted every word and found that the proportion of matter in defendant's book identical with the specified English dictionaries is as follows:

2174

Identical with Ogilvie's and Cassell's combined, 76½%.

Identical with Ogilvie's, 70%.

Identical with Cassell's 61%.

Identical with Chamber's 49%.

Identical with Webster's Unabridged 45%.

2175

This 45% in Webster's is really more than the exhibit actually warrants. I mean that the terms in Webster's are so much scattered and as a rule are not connected, whereas in other dictionaries, but most particularly in Cassell's the language is closer and with fewer gaps. Moreover this 45% of identical words which are common to both Webster's Unabridged and defendant's dictionary does not mean that outside the other dictionaries I found 45% of matter which could be found in Webster's, but the whole of the matter referred to which is enclosed in that 45% could be found in the other dictionaries specified.

2176

Q. 141. Do you mean to say that the same identical matter included in the 45% of words in defendant's dictionary which can be found in Webster's Unabridged Dictionary of 1847, is also included, for example in the 49% of matter in defendant's book which may be found in Chamber's dictionary, in the 61% which may be found in Cassell's dictionary, in the 70% which may be found in Ogilvie's dictionary, and the 76½% which may be found in Ogilvie's and Cas-

sell's combined? Is that what you mean? A. Generally speaking, yes, although in the case, for example Chambers, where the arrangement, the typographical arrangement of Chambers is so different, it would not be so in each and every word, but it may be said that the whole of that 45% is included in Cassell's and Ogilvie's combined.

Q. 142. Do you mean to say that taking and comparing the same pages of defendant's dictionary and the same pages of Webster's dictionary of 1847 that Dr. Peck took and compared in his exhibit, that not more than 45% of identical words can be found common to the two dictionaries? A. That is what I mean, I did not include paraphrases, only the identical words. 2178

Q. 143. Are these words found as a rule consecutively in Webster's? How are they found especially as compared with Cassell's and Chambers' Dictionaries? A. In some instances to make up the sense they were found a line or two apart. It would have been possible to have taken a copy of the New York Sun and marked up some of the columns and say these are the words which have been found, so wide apart and so different from the Webster's dictionary were the words in defendant's dictionary. 2179

Q. 144. How do you explain such similarities or identities as do appear between defendant's dictionary and Webster's dictionary, answer fully? 2180

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial and as calling for a conclusion of the witness, as his explanation will be no evidence.

A. As is well known to all men engaged in lexicographical work there is a certain percentage of identical expression running through all dictiona-

2181

C. O. Sylvester Mawson—Direct.

ries. These similarities may be accounted for, first, as unavailability; second, the use of synonyms; third, coincidence; fourth, common sources.

- Q. 145. Please explain the four terms which you have used? A. By unavailability, I mean, that in the production of any English dictionary so long as the English language is being used, there will be bound to be a certain amount of identity.
- 2182 In other words, were half a dozen men to sit down in a room, without reference to any book whatsoever, and define for example one hundred ordinary English words and if their definitions were afterwards compared, it may safely be said there would be a similarity of 30% to 40%.

- Again in defining of terms there are certain stereotyped forms common to many dictionaries which will be sufficiently illustrated by my referring to the common definition of an adjective as beginning with "of, or pertaining to"; for example, "fragmental, of or pertaining to fragments". Adverbs are commonly defined "in an—manner"; for example, "adverse, in an adverse manner". Many abstract nouns are defined in the following language, "the act of—" or the "state of being—", this being the case where the verb has been previously defined.
- 2183

- I need not increase these illustrations, but you can see by taking the number of adjectives, verbs, and adverbs, not to mention other parts of speech,
- 2184 that this method of defining would account for very great similarity in the dictionaries that employed these forms.

By use of synonyms, I mean that where a synonym naturally suggests itself as a definition of a word, such a synonym would be used by lexicographers generally, even without reference to any book of reference.

Q. 146. Of course the number of synonyms for any given word is necessarily limited? A. The

number of synonyms for any given word is necessarily limited, as you say.

Q. 147. In the case of a brief or abridged dictionary is the use of synonyms as a form of definition more common than in other dictionaries?

A. It is.

MR. CARROLL: Objected to as leading.

A. (Continued.) In a small dictionary being especially a popular dictionary or one designed for use of students, the synonyms, where such can be given to form part of the definitions are more serviceable and as a greater saving of space. 2186

Then on the matter of co-incidence, that is in part covered by my illustrations. For various reasons men, after consulting different authorities, and then attempting to define any given word, would be likely, perhaps unconsciously, to use language which they had read elsewhere, and I think in the definitions of all English terms co-incidence would account for a very fair percentage. 2187

Q. 148. Might not the illustrations you have given under the headings of "Unavoidableness" and the "Use of Synonyms" also be an illustration of the use of the same language by mere co-incidence? A. To some extent yes, except as regards the use of stereotyped forms.

Q. 149. Please explain your fourth ground for accounting for similarities, namely "common sources." A. This seems to be self explanatory. I mean, by common sources I refer especially to authorities such as Johnson's Dictionary which was first published in the year 1755, and which since its publication has been the common source of all English dictionaries that are published in Great Britain, as probably in other parts of the English speaking world. 2188

2189

C. O. Sylvester Mawson—Direct.

Q. 150. In this exhibit which you have prepared in answer to Dr. Peck, have you given any illustration of the similarities between various dictionaries due to the four causes which you have specifically referred to? If so, please specify the pages of exhibit and explain them. A. I have prepared such an exhibit in the pages 30 and 31 of complainant's parallel column exhibit in answer to

2190 Peck's exhibit. This exhibit consists of seven columns, each representing matter taken from as many dictionaries. Column one consists of matter from defendant's dictionary which, by the way, as you will see by its being in red, forms part of complainant's red letter exhibit. Column 2 consists of corresponding terms in Worcester's; column 3 of the corresponding terms in Annadale's Concise Dictionary; column 4 of corresponding terms in Stormonth; column 5 of corresponding terms in Nuttall's Dictionary; column 6 of corresponding terms in the Student's Standard Dictionary published by Funk & Wagnall Company; and column 7 of the corresponding terms in the Concise Oxford Dictionary, which book is published by the Clarendon Press of Oxford, and is based upon the new Oxford English Dictionary.

2191

Q. 151. Is the matter appearing in the seven columns true and complete copies of the matter appearing in the several dictionaries designated by the heading of the respective columns? A. Yes,

2192 except in so far as the omissions are indicated by dots. In Webster's, for example, in order to shorten some of the definitions I have left omissions which are clearly indicated, but as only the words underscored are taken into account in this comparison, the omission is not of importance.

Q. 152. Have you summarized what appears from this comparison of the several dictionaries mentioned on pages 30 and 31 of this parallel column exhibit? A. I have.

C. O. Sylvester Mawson—Direct.

2193

Q. 153. Please state results found by you. A. Of the definitions common to defendant's dictionary and the respective dictionaries with which it is compared in this exhibit, the proportion of similar expression is as follows:

Worcester's 44%.

Annandale's Concise 46%.

Stormonth's 39%.

Nuttall's 39%.

2194

Student's Standard 32%.

Concise Oxford 28%.

The average for these six books being 38%. Taking the first four books named, namely, Worcester's, Annandale's Concise, Stormonth's and Nuttall's, I find that the proportion of defendant's dictionary containing expressions identical with these four dictionaries combined is 80%. In other words by merely taking these four dictionaries which I may say were taken at random, I can account for 80% of the actual language used by the editor of the defendant's dictionary in the corresponding definitions. I may note in connection with this exhibit that none of the dictionaries named therein are based upon, nor are they even alleged to be based upon Webster's unabridged dictionary.

2195

Q. 154. Of the various dictionaries which you have named and which you have referred to in this exhibit, please designate which are English dictionaries and which are American dictionaries. A. Of the books named in this entire exhibit, the following are British dictionaries: Annandale's Concise, Stormonth's, Nuttall's, Concise Oxford, Cassell's Dictionary, Chamber's 20th Century Dictionary, Ogilvie's Imperial Dictionary, Johnson's English Dictionary, The Student's English Dictionary.

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2197

C. O. Sylvester Mawson—Direct.

The following are published in the United States: Webster's Unabridged, Worcester's Dictionary and the Student's Standard.

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Q. 155. You have referred to Johnson's dictionary as a common source for all subsequent dictionary makers. Have you included in this exhibit any comparison of Johnson's with a view to illustrating your point? If so, please explain it. A. I have here such an illustration, namely page 32 of this exhibit. This page consists of four columns; column 1 is a page from Johnson's dictionary, 1799 edition, column 2 is a page from Webster's Unabridged Dictionary of 1847; column 3 is the corresponding matter taken from the British Empire Dictionary, and column 4 is the corresponding matter from the defendant's dictionary. It will be seen that column 3 and 4 have been taken from complainant's red letter exhibit.

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The matter underscored in Johnson's dictionary is identical with Webster's Unabridged, also underscored. In the British Empire Dictionary and in the extract from the defendant's dictionary, I have underscored the matter which is identical with the corresponding terms in Johnson's. From this it will be seen that Johnson's dictionary is one of the main sources of all later English dictionaries and of these specified dictionaries in particular. The British Empire Dictionary for example contains between 49% and 50% of matter traceable to Johnson's dictionary, in so far as the definitions are common to both books. By traceable, I mean that the language is identical. To show how much Webster relied upon Johnson's Dictionary, I will quote you the definition of "congenital" which is identical in both Webster's and Johnson's and is as follows: "of the same birth; born with another; connate, begotten together."

2200

Q. 156. Mr. Hale: The exhibit identified and explained by the witness is now offered in evidence

C. O. Sylvester Mawson—Direct.

2201

and the same is received and marked "Complainant's Parallel Column Exhibit in Answer to Peck's Exhibit," the same consisting of thirty-one pages, numbered and initiated, and enclosed in an envelope.

Q. 157. Will you please state shortly in the form of recapitulation the facts upon which you based the opinion which you have expressed, that defendant's dictionary is not founded upon or based upon Webster's Dictionary of 1847? 2202

MR. CARROLL: I object to that question on the ground that witness has not stated such to be his opinion, and on the further ground that if he had so stated it it would have been incompetent, irrelevant and immaterial, inasmuch as this witness has not been qualified as an expert to give such an opinion.

2203

A. I think my exhibit clearly demonstrates that defendant's dictionary can in no wise be said to have been either based upon or in any way inspired by any edition of Webster unabridged.

First: The orthography to the extent of the comparison previously stated, is British and not American (by American I mean such as was introduced by Noah Webster and is now the accepted American form). Such terms as have been changed to an American form and which have not been put in correct alphabetical place further show that an English book and not Webster's was the source. 2204

Second: The character or general complexion of the defendant's book is British and not American. Noah Webster, while not ignoring the English sense altogether, does not insert them to the exclusion of the American sense. As will be seen

2205

C. O. Sylvester Mawson—Direct.

from the list already introduced into this record there are a number of definitions in defendant's book which do not contain the American sense at all, nor is the British sense characterized as such. If Price for instance in making the first dictionary had had Webster's Unabridged Dictionary before him, he would not have omitted the American definitions altogether, for his book consists of
 2206 a good number of definitions or parts of definitions which he characterizes as American (U. S.).

MR. CARROLL: I must here interrupt the witness and protest against such argumentative conclusions which are obviously incompetent and request counsel to direct his witness to confine himself.

MR. HALE: Proceed with your answer, confining yourself, as far as possible, to the features which are in the books.

2207

Third: A word for word comparison between the defendant's book and Webster's dictionary shows so little similarity so great a dissimilarity that it is inconceivable that a copy of Webster's Unabridged was consulted by either Roe or Price. As is shown by "Complainant's parallel column exhibit, in answer to Peck's exhibit, the proportion of identical words is actually smaller in Webster's than
 2208 any other dictionary with which I have compared it. And I state it as a matter of fact, and a proved fact as is brought out by the same exhibit, that Webster's Unabridged formed no part whatsoever of the editor's stock in trade.

MR. CARROLL: I object to that and ask that it be stricken from the records as an incompetent conclusion of the witness.

(Witness continues): And there is no evidence,

C. O. Sylvester Mawson—Direct.

2209

certainly in so far as Professor Peck's exhibit goes to show, that Webster's was even consulted at all.

Fourth: The percentage I have shown on page 31 of complainant's parallel column exhibit, that there is an average percentage of 38 of identical terms—

MR. CARROLL: I again object to this answer as mere repetition of testimony already given and as a waste of time. 2210

(Witness continuing): Were I to include Chamber's and Cassell's dictionaries the average percentage would be increased to over 45%, and so by this method of reasoning alone which seems to me a very sound one, Webster's would be out of the running altogether.

Fifth: The last page of complainant's parallel column exhibit shows to what extent Johnson is a common source of both Webster's Unabridged, The British Empire Dictionary and other English dictionaries, so that wherever similar language will be found in a definition in Webster's Unabridged and in defendant's dictionary, that similarity can generally be traced to Johnson's dictionary. In short, whatever similarity there is, is already accounted for and simply goes to show that Webster's Dictionary instead of standing to the defendant's dictionary in the relationship of parent and offspring really stands in that of a very distant cousin. 2211

Q. 158. From what source did you obtain the British Empire Dictionary which you have produced here in evidence? A. We secured it through our London Agents, Messrs. G. Bell & Sons, Ltd. 2212

2213

C. O. Sylvester Mawson—Cross.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 1. Are you a university man? A. I am.

x Q. 2. What university? A. Oxford.

x Q. 3. When did you graduate? A. 1895.

x Q. 4. What college? A. Balliol.

x Q. 5. What degree did you take? A. M. A.

2214 x Q. 6. Have you any other degree? A. I have not, but I am a member of various learned societies, for example, the London Philological Society, the Royal Asiatic Society, The Royal Society of Arts, The American Oriental Society, the Societe Asiatique of France and others.

x Q. 7. Is your connection with these societies anything else than that of a member? A. That is all, or fellow.

2215 x Q. 8. Where did you go when you graduated? A. I was connected with various literary work in England and I travelled a great deal, made a special study of Oriental languages, came to this country, and I think the rest I have already explained in answer to Mr. Hale at the beginning of this interview.

2216 x Q. 9. The only real study of languages that you have made has been that of Oriental languages? A. No, I have been a student of English as an Englishman, and as a lover of languages generally I have made a special study of English pretty much all my life, and I hold that no man can have a full knowledge of English who is not well up in classical languages, in particular Sanskrit. Without it you would not be a competent judge on many of the finer points, especially in dictionary work, and as proof of the success I have attained and of my skill in this matter, I would not be in the employ of G. & C. Merriam Company and certainly would not be here at the present moment were I not efficient in this branch.

x Q. 10. By "this branch," you mean the Oriental branch? A. No, I mean dictionary work, that is merely a side line with me, Oriental work.

x Q. 11. I understood you to say that you were with the Merriam Company as Oriental authority?

A. I am here as general editor.

x Q. 12. What time were you employed by the publishers of the Century Dictionary? A. The work I did for the Century Dictionary was done, as you say, on the side and was done between three and four years ago.

x Q. 13. What did the work consist of? A. 2218
Going through their dictionary from A to Z, going through every definition, picking out all the Oriental terms, taking the English terms, polishing them, improving them, revising them, making additions where necessary, doing all the fine work, such as was done by Professor Whitney, and on his death Dr. Benj. E. Smith chose me to do the same work. Needless to say he would not have done so if he had not been satisfied with my ability.

x Q. 14. When were you employed by Funk & Wagnalls? A. Up to December, 1910. 2219

x Q. 15. Beginning at what date? A. Beginning about the year previous, beginning in the earlier part of the year, I forget when, I left them to join the Merriam Company.

xQ. 16. So your whole dictionary experience has been included practically within the last four years? A. Yes, and no. I have been more closely associated with the big dictionaries in the last four years than at any previous time in my career, but any student of English must be tolerably well acquainted with English dictionaries generally, and I can assure you that the training in the big offices of this country, as in Funk & Wagnalls or the Merriam Company counts for a great deal. One year of that is worth ten years of desultory study out of it. In any other work four years would be considered a very long apprenticeship. 2220

2221

C. O. Sylvester Mawson—Cross.

x Q. 17. When did you first see a Webster's dictionary? A. So long ago, I can't remember.

x Q. 18. Can you give any approximate dates? A. Webster's dictionary, you must understand, is the standard work in England, so much so that not until I was a grown man did I realize that it was an American publication. It is identified with the name of George Bell, and is used in all the
2222 schools and colleges, and the houses of literary men, and is regarded as the best one volume dictionary of the language, and it is the dictionary that is most generally consulted. I can't tell you when I first became acquainted with it, it is so long ago.

x Q. 19. Have you ever made a careful study of Webster's dictionary? A. I am doing it all the time. Our work consists here in going through the dictionary over and over again, polishing, refining, revising, and to ask any man on the Web-
2223 ster staff if he has made a study of their publication seems to me somewhat unnecessary.

x Q. 20. Had you made a careful study of the Webster dictionary before you came to the Merriams? A. I did. I went through it in connection with the other work, but particularly as Webster's Dictionary embodied a large number of Oriental terms I may say I had previously gone through every word of their International Dictionary, that is the dictionary which preceded the
2224 New International, before joining their staff.

x Q. 21. What was the occasion for that? A. In connection with my studies as Oriental specialist.

x Q. 22. When was that? A. Four years ago.

x Q. 23. Did you ever hear of Professor Mahn? A. For the moment, I can't think of him.

x Q. 24. Did you ever hear of Professor Skeat? A. That also seems an unnecessary question to ask a lexicographer, as he is one of the greatest authorities on etymology we have had.

x Q. 25. Then you have heard of Professor Skeat? A. I have.

x Q. 26. Can you give the names of his books? A. Skeat's Etymological Dictionary.

x Q. 27. When was that published? A. Some time, I believe, in the latter quarter of the 19th century, I cannot say the exact date. We have the book in the office.

x Q. 28. You think however it was about 25 or 30 years ago? A. I have said I thought it was published some time in the latter quarter of the 19th century. We have the book in the office and consult it very, very frequently. It is on our shelves as are also all the leading works of reference, but I don't make a point of committing the dates of their publication to memory. 2226

x Q. 29. Do you know what Grimm's Law is? A. I do.

x Q. 30. What is it? A. Grimm's Law briefly stated, shows that various words derived from the Sanskrit, for instance, undergo certain changes in other languages derived from the same source, certain consonants for instance being subsituted for others. 2227

x Q. 31. Did you ever hear of Karl Vernor? A. I have, but I cannot recall very clearly.

x 32. Do you know in what respects his discoveries followed Grimm's law? A. I may say right here, that I am not a specialist in this branch of the work. This would come under the branch of etymology and orthoepey, and I am not a specialist of that particular branch. 2228

x Q. 33. You really only claim to be a specialist in Oriental work? A. I claim to be a general editor, a general lexicographer, I only claim to be a specialist on Oriental terms.

x Q. 34. In the careful and detailed studies of Webster's Dictionary which you say you have made, did you discover any traces of the work of Raskin? A. I do not recall.

2229

C. O. Sylvester Mawson—Cross.

x Q. 35. What was he noted for? A. That I also do not recall.

x Q. 36. Did you ever hear of him before? A. His name is not very familiar to me.

2230 x Q. 37. In your various exhibits you have spoken many times of a so-called English form of spelling and a so-called American form. Precisely what do you mean by this, and what authorities do you depend upon for calling one spelling and another English or American? A. I think my exhibit will answer that question. The authorities I depend upon are the English dictionaries referred to in complainant's parallel exhibit, and by English forms of spelling I mean the forms which are commonly used by such dictionaries, as distinguished from the forms which are approved and are now generally adopted by the best American dictionaries.

2231 x Q. 38. What is the English and what the American form of spelling the word "medieval"? A. The English is "mediaeval" and the American form is "medieval."

x Q. 39. You would say then that in Webster's it is spelled "medieval"? A. That is what I mean.

x Q. 40. How do you account for the spelling then in Webster's Condensed Dictionary, which is "mediaeval"?

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MR. HALE: Objected to as incompetent, irrelevant and immaterial, because the book referred to is not in issue in this case.

A. I had no part whatever in the preparation of that book and can offer no opinion on the matter.

x Q. 41. What is the English form of spelling "aesthetic"? A. "Aesthetic."

x Q. 42. And the American form? A. Two forms are common in this country, there is really no American form. Both the "aesthetic" and

“esthetic” are to be found in American dictionaries.

x Q. 43. Which do you consider really American? A. Unless I found the same spelling in Webster’s New International Dictionary, Funk & Wagnall’s Standard Dictionary and in the Century Dictionary, I would not use the term “American spelling,” unless it was common. I confined the use of the word “American” spelling to such words as are represented by the above dictionaries in this country, such words, for instance, as those ending in “re” in the English form and which in the American form end in “er”; such also as the words in “our” in English which in the American form are “or”; and those which in the English form end in “ise” and in the American form “ize.” 2234

x Q. 44. Is it not a fact that many words beginning in “en” and “in” are used interchangeably in the two countries, both forms being approved, for example, “engulf” and “ingulf,” cited by you, from your exhibit? A. Generally speaking any such word beginning with “en” or “in,” the American form is the “in,” whereas the general British form is “en.” For instance, in this country we say “inclose,” whereas in England “enclose” is more common. 2235

x Q. 45. Is it not a fact however that both of these forms are given in the three American dictionaries which you have named as authorities, namely,—Funk & Wagnall’s Standard, The Century and Webster’s? 2236

MR. HALE: Objected to as irrelevant and immaterial, the question being whether it is true that defendant’s dictionary follows Webster’s Dictionary of 1847, rather than whether there is any American authority for defendant’s form of spelling.

2237

C. O. Sylvester Mawson—Cross.

A. Where both forms are given in the American dictionaries named, it will be found that the definition is to put under the approved American form. For instance "en" or "in" the American dictionary may put it "inclose" and define it there, and at the end of the definition or, as the case might be, at the beginning of the definition, "also enclose," showing that form will also be
 2238 seen, and "enclose" in the proper dictionary place will simply be a cross reference, "see inclose," or "same as inclose," but the place where the definition occurs is the approved American form, although both forms appear in the dictionaries.

x Q. 46. Are you sure all the three American dictionaries, Century, Standard and Webster's agree on the spelling of the words beginning in "en" or "in," also on "despatch" or "dispatch"?
 2239 A. In connection with this case, I have confined my references to the Webster's dictionaries, and in instances quoted I have not looked up each and every one to see what form is preferred by the Standard Dictionary or by the Century Dictionary, but generally speaking, it will be found that the form adopted and accepted by Webster is the one approved of by the other two dictionaries especially in the Standard Dictionary, which is ultra-American in its spelling.

x Q. 47. You have mentioned the following
 2240 differences or preferences in the English spelling and American spelling, namely you have stated that the English preferred to spell words like "honor" in "our" while in America they prefer to spell them "or"; the English prefer "theater" in "re" in America in "er"; words like "ingulf" the English prefer "en" whereas the Americans prefer them "in". Can you think of any more instances of this kind where there is preference shown for one form by English spellers and an-

other form by American spellers? A. There are instances which will be found in the list embodied in the earlier part of this deposition.

x Q. 48. How many such words are there altogether, that is to say, words that have one form of spelling preferred in England and another preferred in America?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, question being whether defendant's dictionary follows the Webster's dictionary of 1847. 2242

A. I cannot tell you in figures the exact total number of words that have an American form distinct from the British form, but so far as I have examined defendant's dictionary in comparison with Price's British Empire Dictionary I found that in about 75 instances the British form of spelling had been retained in defendant's book and that changes from the British form had been made in only 189 instances. From these figures you will see that 40% of the British forms have not been changed. 2243

x Q. 49. Are you certain that no more than 264 words contained in defendant's dictionary have what may be called two spellings, one English and one American? A. I merely counted the instances where the spelling in defendant's dictionary differed from the spelling in Price's, no more. 2244

x Q. 50. But in order to arrive at your conclusion, twice stated on the record, that 40% of the words contained in defendant's dictionary, which have both an English and American spelling, are given in an English form, you must have counted or assumed to count all of the words in defendant's dictionary which could have two forms. It is only in that way that you arrive at the total 100%. A. This is a simple matter of arithmetic and my figures are borne out by the list embodied

2245

C. O. Sylvester Mawson—Cross.

in this deposition, as well as by the exhibits, which will show how I have arrived at my result.

x Q. 51. How do you know that 40% of the words contained in defendant's dictionary could have an English or American spelling, unless you have counted all of the words in defendant's dictionary which could have two spellings? A. The whole of the words were compared, I only counted
2246 the dissimilarities.

x 52. The whole of what words were compared? A. The whole of the words in the defendant's dictionary were compared with the identical words in Price's dictionary.

x Q. 53. Then there may have been a number of words in Price's dictionary which escaped your notice, but were nevertheless spelled in the American way, and which would also be spelled similarly in the American way in defendant's dictionary?
2247 A. That is a wrong conclusion.

x Q. 54. Why? A. Because as a lexicographer, and as an Englishman educated in England, I am more familiar with the English form than with the American form and departure from the accepted English form would immediately strike me, but in addition to this,—which I had forgotten to state before—we have a printed list in the office which gives very exhaustively all the spellings approved of by Noah Webster and which have
2248 been retained or have not been retained in our late edition. This list I used in connection with my analysis of defendant's books and also of Price's dictionary.

x Q. 55. Then it is a fact that many of the spellings given in the later Merriam editions are not the spellings approved of by Noah Webster?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. There are some few instances such as that.

x Q. 56. I think you spoke of quite an exhaustive list. A. We have an exhaustive list which shows in parallel columns the form approved of in the earlier Webster's and the forms which are now adopted. There are instances where the form suggested or used by Noah Webster has been departed from, for reasons which have seemed sufficient to the publishers of this dictionary, but in the list I have already given you of these differences, I have only shown—I have only classed as Americanisms the terms which were approved by Noah Webster and which are still retained in our present dictionary. 2250

x Q. 57. In so far as your present dictionaries have changed the spelling approved of by Noah Webster, they are not Websterian?

MR. HALE: Objected to as incompetent, immaterial and irrelevant and as calling for the mere conclusion of the witness. 2251

A. Such changes in the present edition were made by the editor in chief and in which I have no part.

x Q. 58. Do you consider they are Websterian?

MR. HALE: Objected to as incompetent, immaterial and irrelevant and as calling for a conclusion of this witness, who has not used the term "Websterian" in his entire deposition. 2252

A. I offer no opinion, outside the terms that are included or referred to in the present exhibit and in this deposition.

x Q. 59. You wouldn't say, however, would you, that a form rejected by Webster was Websterian?

MR. HALE: Objected to for the same grounds as last stated, and counsel is requested to define the sense in which he is

2253

C. O. Sylvester Mawson—Cross.

using the word "Websterian" so that witness can answer it in the same sense as the counsel uses it.

x Q. 60. Do you understand the term "Websterian" that I am using? A. We do not use the term "Websterian" in connection with our dictionary and to me the word has no special significance.

2254

x Q. 61. I mean in the sense which the suffix "I. A. N." is always intended to indicate, "pertaining to Webster".

MR. HALE: Counsel is requested to state plainly and fairly with what sense he used Websterian" in his question.

2255

MR. CARROLL: Until counsel for complainant made his objection, the witness obviously had no difficulty understanding what "Websterian" meant and counsel for defendant has now sufficiently defined it.

MR. HALE: It does not appear that the witness understood the word "Websterian" in the same sense that counsel uses it.

x Q. 62. What does the witness understand by the word "Websterian"?

2256

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. By "Websterian" I would understand of or pertaining to any person bearing the surname Webster.

x Q. 63. It is obvious the witness understands the term exactly in the sense which the counsel for defense used it, the question in which the word was used is also repeated. (Question read by stenographer.) You wouldn't say, however, would

you, that a form rejected by Webster was Websterian?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. In your question you used the phrase "rejected by Webster". I ask what you mean by that?

x Q. 64. You have stated where there were two possible ways of spelling a word Webster had selected one way of spelling it and rejected the other way, and that in the present Merriam edition the form not approved by Webster and therefore rejected by him is used. It is that which I mean by "rejected." A. Yes Webster made these changes in accordance with his lights and his knowledge of philology as it existed in his day, but there are very sound reasons for making changes in certain words which have been done, and such changes have been made in accordance with the ruling of the New English Dictionary, but my examination of defendant's book shows that in no single instance has he retained the form approved by Noah Webster in such forms as have been rejected by the present Webster Dictionary. 2258 2259

x Q. 65. I thought you said that in 189 cases at least, defendant's dictionary had used the approved American form.

MR. HALE: Objected to upon the ground that the witness referred to a list of words spelled in the usual English form, which form had been rejected by the Webster 1847 edition. 2260

A. The 189 vocabulary terms referred to are American spellings which in every instance, in so far as the terms themselves are to be found in

2261

C. O. Sylvester Mawson—Cross.

Webster's Unabridged of 1847 were approved by Noah Webster himself and are retained today in the International Dictionary.

x Q. 66. Are there words not included however in the 189 or 75, which now have, or at some time in the past have had, two different spellings, one Websterian and one non-Websterian?

2262

MR. HALE: Objected to as irrelevant and immaterial and because the revision of an English book to make it conform to modern American spelling does not make it a Webster Dictionary.

MR. CARROLL: Objected to as statement of counsel embodies a conclusion and improper statement.

A. I think I have already answered this question.

x Q. 67. Is that not so? A. There are such words.

2263

x Q. 68. Why have you not included such words in your total 100% of words with two spellings upon which you have attempted to compute the percentage of so-called English spellings in defendant's book? A. It was only part of my scheme to make a list of the words which I found approved of by Webster and which, although the defendant's book claims to be based on Webster's, do not conform to the Webster's method of spelling, and although as I have before remarked I compared the book very thoroughly with a list of all the Websterian spelling in our dictionary, I did not come across any American or English forms outside of the list already given. As I have already explained, I only made a count of the dissimilarities, where the words are not dissimilar the spelling is identical with the accepted English form.

2264

x Q. 69. Then you really have no hundred percent. upon which to base your computed 40%? A.

Oh, yes, I based it upon a 100% of 264, which is the sum of 189 terms changed to the American form and of the 75 others which should have been changed to an American form, but which have been left in their British form; 75 of that total is approximately 40%.

x Q. 70. How do you know that there are not many other words which might have been given in the so-called Price book in an English form, but which were given in the Price book in an American form, and were also given in the defendant's dictionary in the American form? 2266

MR. HALE: Objected to upon the ground that the witness has not so stated and no evidence has been offered of that fact.

A. For the reason aforesaid, that I checked the defendant's book with a list of Americanisms in this office, and I did not find any such instances. 2267

x Q. 71. The list of Americanisms in this office you have already stated was a list of changes which have been made by subsequent editors of Merriam's Webster, from the original Webster's spelling, is that not so? A. That is so.

x Q. 72. Then how could you be sure that 164 is the grand total of all words contained in defendant's dictionary which might have had a different spelling from that contained in the Webster's of 1847? A. My examination does not show that there were such differences. 2268

x Q. 73. What do you mean by that answer? A. This is what I meant, if there had been such instances, I would have noticed them in my careful examination and I would have recorded them.

x Q. 74. You are perfectly sure then that 264 is the grand total sum of all possible different spellings of words contained in defendant's dictionary? A. I noted no others.

x Q. 75. Does that convince you there were no

2269

C. O. Sylvester Mawson—Cross.

others? A. As I prepared these exhibits and examined the books very carefully, it does.

x Q. 76. You have already stated that there were several other instances of words spelled in a different way in a more modern Webster's, and these words are not included in the 264. A. I did not say however that I came across such instances in defendant's book, I made it as a general observation.

2270

x Q. 77. There may, nevertheless be such? A. I did not say so.

x Q. 78. Did you not say that there is in this office a list of words, the spelling of which has been changed by subsequent editors from the spelling of these same words in the original Webster's? A. We have such a list in the office the most exhaustive of which is contained in the old International Dictionary which gives a list of the words which have variant spelling.

2271

x Q. 79. Did I misunderstand you when I understood you to say that there was also a list in the office, separate and apart from the list included in the old International, which list contained words, the spelling of which had been changed by subsequent editors of Webster's dictionaries from the spelling of old Webster's dictionaries? A. Perhaps my answer was not sufficiently plain, but I was referring particularly to the list named, in the old International Dictionary.

2272

We have one or two other lists which cover pretty much the same ground, but I also compared this list with our new International, in order to make sure of getting our present day American accepted forms.

x Q. 80. The present day accepted American forms in many instances differ from the forms accepted by Webster, do they not?

MR. HALE: Objected to as irrelevant and immaterial.

A. In certain cases, yes.

x Q. 81. Have you a list of such instances? A. I am not aware we have a separate list of instances you refer to.

x Q. 82. How many words are there on the list which you have referred to as contained in the old International Dictionary, the words with two spellings? A. I have not counted them.

x Q. 83. How many words which appear on that list and which have two spellings are contained in the defendant's dictionaries? 2274

MR. HALE: Objected to as irrelevant and immaterial.

A. I made no separate calculation outside of the figures which I have given.

x Q. 84. Then there may be more than 264 words contained in defendant's dictionary which appear on that list? 2275

MR. HALE: Objective to as merely argumentative and asking for an opinion.

A. There are not more than that number which have an accepted American form. The defendant's dictionary, I understand, is an American dictionary.

x Q. 85. I think you stated that that list contained only words which had two different spellings, am I correct in that thought? 2276

MR. HALE: Objected to unless counsel will state whether he means that the words referred to have two different accepted spellings today and not words which formerly were spelled one way and now are spelled another which would be true of a vast number of words in the English language. The question is therefore objected to as ambiguous.

2277

C. O. Sylvester Mawson—Cross.

A. I have already stated the list referred to is a list of variant spelling.

x Q. 86. As they existed at the time the old International was published, is not that a fact? A. That is a fact.

2278 x Q. 87. You don't know therefore how many words contained in defendant's dictionary are included in that list, do you? A. I made no separate calculation outside of the figures already given you.

x Q. 88. Can you state that only 264 words that appear on that list also appear in defendant's dictionary?

MR. HALE: Objected to as irrelevant and immaterial

2279 A. I have no reason for discrediting my own figures, as I think they show the whole of the changes that have been made from the English form as recorded in Price's Dictionary to the accepted American form.

IT IS HEREBY STIPULATED, that the following named dictionaries shall be assumed in evidence without being actually produced and offered and may be referred to at the final hearing and at any and all subsequent appeals herein with the same force and effect as though the said books had been produced and marked in evidence, to wit:—

2280

Webster's Dictionary, 1847 edition.

Webster's Dictionary, 1864 edition.

Webster's International Dictionary, Edition 1890.

Webster's New International Dictionary, Edition 1909.

Worcester's Dictionary, 1859 edition.

Johnson's Dictionary, 1799 edition.

Funk & Wagnalls' Standard Dictionary.

Funk & Wagnalls' Student's Standard Dictionary.

C. O. Sylvester Mawson—Cross.

2281

Century Dictionary.
 Cassell's Dictionary.
 Chamber's 20th Century Dictionary.
 A Concise Oxford Dictionary.
 John Ogilvie's Imperial Dictionary.
 Annandale's Concise Dictionary.
 Stormonth's Dictionary.
 Nuthall's Dictionary.

2282

x Q. 89. In general did Webster use the diphthongs "æ" and "œ" or did he use the simple letter "e" in place of them in such words as "ægis" "aesthetic", "faecal" etc? A. As a general rule Webster preferred the simpler form.

x Q. 90. The following words are spelled in Webster's Condensed Dictionary with the diphthongs: "ædile", "ægilops", "ægis", "æolian", "æon", "aesthetic" and "ætiology". For all these forms the spelling noted is given first as the preferred form, a second form is given only in the following words: "egile", "eon" and "esthetic". What authority is there for this spelling in a so-called Webster's Dictionary?

2283

MR. HALE: Objected to as incompetent, irrelevant and immaterial and because the book referred to, Webster's Condensed Dictionary, is not in issue. Objected to further because defendant claims to have based his book upon and followed Webster's Dictionary of 1847 and does not claim to have followed Webster's Condensed Dictionary which is a copyrighted book.

2284

MR. CARROLL: The question is asked for the purpose of showing how loose is the use of words which have two spellings in complainant's own books.

MR. HALE: That does not add to the relevancy or materiality of the question.

2285

C. O. Sylvester Mawson—Cross.

A. I offer no opinion on the words you refer to.

x Q. 91. I suppose you can offer no opinion about the spelling of "anapaest" which appears on page 19 of Webster's Condensed Dictionary?

MR. HALE: The same objection.

A. I do not.

2286

x Q. 92. Do you know any authority for the spelling of the word "fogy," "fogie" and "fogey"? This word appears so spelled in Webster's Condensed Dictionary.

MR. HALE: Objected to as irrelevant and immaterial. Further, because it appears that the book referred to was a book first compiled and copyrighted in the year 1884 and that it conformed with the then existing Webster's Dictionary.

2287

A. I offer no opinion on that book.

x Q. 93. You know of no authority then for such spelling? A. The word "fogy" will be found spelled both ways in English and American books.

x Q. 94. Which do you call the English form? A. "Fogey" is one of the English, I don't know whether there is a hard and fast English form. I have seen the form "fogy" in England and "fogey."

x Q. 95. Have you seen the form "fogie" in any
2288 recognized authority?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, because the book, Webster's Condensed Dictionary, referred to by counsel is not in issue in this case.

A. "Fogie" is a variant. I cannot name any work I have seen it in, but I think I have come across it in my dictionary work.

C. O. Sylvester Mawson—Cross.

2289

MR. HALE: It is further objected to upon the ground that the witness in his list of words offered in his comparison of the dictionaries does not rely in any way upon the spelling of this word.

x Q. 96. How would you spell the word which is the opposite of musical?

MR. HALE: Objected to as irrelevant and immaterial, because the witness has in no way used this word in his comparisons. 2290

A. I would spell it "unmusical."

x Q. 97. Do you know of any authority for the spelling which appears in Webster's Condensed, "inmusical"?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, because the book is not in question and the word has not been used by witness in making his comparison. 2291

A. "Inmusical" is simply a variant form of the same word and neither one or the other can be identified as being definitely British or American. I know of no reason for classifying it as either one or the other.

x Q. 98. Attention is called to the fact that "inmusical" is defined in Webster's Condensed Dictionary, as "not harmonious, unmusical," but the word "unmusical" does not appear in the dictionary. 2292

MR. HALE: The statement of counsel is objected to as incompetent, irrelevant and immaterial, because the book referred to is not in issue in this case.

MR. CARROLL: The book however is in evidence and speaks for itself.

2293

C. O. Sylvester Mawson—Cross.

x Q. 99. How do you account for that?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and because a witness is not called upon to account for anything in a book concerning which he has stated he had nothing whatever to do, also as calling for a mere conclusion.

2294 A. I can offer no opinion on a book of which I know nothing about the preparation, but it is possibly an oversight.

x Q. 100. You were for many years in India were you not? A. I was.

x Q. 101. Do you know when the East India Company ceased coining money?

MR. HALE: Objected to as irrelevant and immaterial.

2295 A. Off-hand, I think about 1860 or 1865, I am not quite certain.

x Q. 102. It was soon after the India Mutiny of 1859? A. Soon after, I cannot recall the exact date.

x Q. 103. Can you recall the date approximately?

MR. HALE: Same objection.

A. Somewhere in the early sixties.

2 '96 x Q. 103. That is near enough. The following definition appears in Webster's Condensed Dictionary on page 500, "rupee, the silver rupee coined by the East Indian Company at Calcutta, valued at nearly 50¢." Would you consider that an accurate up-to-date definition of the word "rupee."

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for a conclusion and opinion of the witness, and

C. O. Sylvester Mawson—Cross.

2297

further because the book referred to by counsel is not in issue.

A. It is not strictly correct.

x Q. 104. How do you spell the word "seathe"?

MR. HALE: Objected to as irrelevant and immaterial.

A. It is spelled in two ways, both of which are used more or less interchangeably even in England. Some English dictionaries for instance will give "scath" while others will give it "scathe." 2298

x Q. 105. Is the latter the more approved American form?

MR. HALE: Objected to as incompetent and irrelevant and because the book referred to by counsel is not in issue.

A. I cannot reply without actual reference to the dictionary. 2299

x Q. 106. You think then that both forms are used interchangeably with equal frequency in both countries?

MR. HALE: Objected to as irrelevant and immaterial.

A. I think that "scath" is the more usual American form.

x Q. 107. How do you spell the word "sussell, a clipping of metal made from various mechanical operations"? 2300

MR. HALE: Objected to as irrelevant and immaterial, and because the witness has not used that word in making his comparisons with defendant's dictionary, and further because it does not appear that there is an established and variant form of English and American spelling of that word.

2301

C. O. Sylvester Mawson—Cross.

A. I am not familiar with the word.

x Q. 108. On your direct testimony I believe you denounced giving as nouns a combination of nouns, such as "Adam's Ale," etc., did you not?

A. When "Adam's Ale" is written as a phrase and not hyphenated, I object to its being classed as a noun.

2302

x Q. 109. You think then that such words should be given either with the hyphen or should be defined as sub-headings under the noun, is that correct? A. That is so.

x Q. 110. You would not then approve of the phrase "Seidlitz Powders," which appears in Webster's Condensed Dictionary on page 518 with a hyphen?

2303

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for the mere opinion of the witness and because the dictionary referred to by counsel in his question is not in issue in this case.

MR. CARROLL: The dictionary in question has been widely sold in competition with defendant's dictionary, and this witness has expressed a decided opinion and in fact a condemnation of defendant's book upon that particular point.

2304

MR. HALE: The question is further objected to as incorrectly stating the contents of Webster's Condensed Dictionary which does not designate that phrase as a noun.

A. Webster's Condensed Dictionary bears out my contention. Seidlitz Powders is given but it is not characterized as a noun, but it is written down as a phrase.

x Q. 111. Then the real fault you have found with such a term is the characterization of it as a noun.

C. O. Sylvester Mawson—Cross.

2305

MR. HALE: Objected to upon the ground that the witness has not found fault with anything, but has merely pointed out an erroneous statement.

A. An un-hyphenated phrase cannot correctly be classified as a noun.

x Q. 112. Is there such a double consonant in Latin as "th"?

2306

MR. HALE: Objected to as irrelevant and immaterial and further because the witness has not qualified as a Latin scholar.

MR. CARROLL: Any general student of lexicography who is not familiar with the Latin and Greek alphabet would not claim any great distinction.

A. "Th" does occur in Latin but is from the Greek "theta."

2307

x Q. 113. If it does occur in the Latin, is it not really stolen from the Greek and used to express a Greek sound?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. It is derived from the Greek.

x Q. 114. Do you know when the book which you have referred to as Price's book was written? A. Approximately 1899.

2308

x Q. 115. Did you make a careful comparison of that book with any of the editions of Webster's dictionaries? A. With the 1847 edition, yes.

x Q. 116. Did you find any similarity between the books? A. None, but what one would expect to find in comparing any two English dictionaries, and less in Webster's than in any other English dictionary with which I compared it.

x Q. 117. Is there any comparison of the Price

2309

C. O. Sylvester Mawson—Cross.

books with any edition of Webster's dictionary included in your exhibits?

2310

MR. HALE: Objected to as incompetent, because the exhibit is in evidence and will speak for itself, and further because it appears from the exhibits that have been offered that defendant's book has approximately 98% of its matter identical with Price's dictionary, and the defendant's book as appears from the exhibit is carefully compared with Webster's 1847 edition.

2311

A. In so far as it appears in the exhibit, yes.

x Q. 118. In your list of words which you have read into the record, under the heading "Orthography," you have marked with a dagger a number of words which do not appear at all in the Webster's of 1847. How can you therefore give any preferred Webster form for the spelling of these words? A. For a very good reason, the red dagger indicates that form, not that word, does not appear in Webster's of 1847. Taking for instance the word "axe," in the Webster's of 1847 we find only "ax" showing that Webster himself did not countenance the spelling "axe."

2312

x Q. 119. In every case, therefore, where the dagger does not appear both forms were given in the original Webster's of 1847? A. That is so.

x Q. 120. Of the two forms given however, Webster preferred the shorter form, and that preferred form is given in the third column? A. That is correct.

x Q. 121. None of the words given in this list then were entirely absent from the Webster's of 1847 were they? A. No.

x Q. 122. Did you in each instance take the so-called preferred Webster form from the Webster of 1847? A. The Webster's preferred form

C. O. Sylvester Mawson—Cross.

2313

means the form as preferred by Noah Webster in the edition of 1847, and which are still retained in the Webster's New International Dictionary and other leading American dictionaries.

x Q. 123. Have you a copy of the 189 words which you have referred to as appearing in the defendant's dictionary in the Webster form of spelling, as these same words appear in the Price book in the so-called form of spelling?

2314

MR. HALE: Objected to upon the ground that the witness has not testified that the words referred to appear in the Webster form of spelling, but simply that the spelling of Price's dictionary has been changed.

A. As these forms are clearly marked in defendant's dictionary, I saw no reason for making a special list.

x Q. 124. How are they so marked? A. By a small blue underline. 2315

x Q. 125. Doesn't the defendant's book in nearly every instance give both forms? A. No, in numerous instances it does not. It only gives one and that commonly British.

x Q. 126. In many instances however they give both forms, do they not? A. In certain instances where both forms are given the reference is made to what I call the British form, under which the definition will be placed. I refer in this connection to the list previously given headed "Cross References." 2316

x Q. 127. Do you know the date that Cassell's dictionary was written? A. The edition I used is dated 1891 as indicated by complainant's Parallel Column Exhibit, page 1.

x Q. 128. And the edition of Chamber's 20th Century Dictionary which you used was of 1901? A. Yes.

2317

C. O. Sylvester Mawson—Cross.

x Q. 129. And the edition of Ogilvie's Imperial Dictionary was 1883? A. Yes.

x Q. 130. You have stated that Webster's Dictionary has for many years been an accepted authority in England, is that correct? A. It is correct.

2318

x Q. 131. Is it not probably true that these three dictionaries which we have referred to as Chamber's Cassell's and Ogilvie's, were very largely taken from one of the editions of Webster's Dictionary?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and calling for a mere guess and surmise upon the part of the witness as to what is probable.

A. I don't think so, for the reasons that will be shown in my exhibit.

2319

x Q. 132. How do you account for the remarkable similarity between the three books mentioned and Webster's 1847?

MR. HALE: Objected to as incorrectly stating the fact, to wit, that there is a remarkable similarity between the three books and the Webster's 1847.

A. That question has been pretty fully answered in my direct testimony.

2320

x Q. 134. You think then there was no connection whatever between the Webster's 1847 and these three dictionaries? A. To what three dictionaries do you refer?

x Q. 135. To Cassell's, Chamber's and Ogilvie's.

MR. HALE: The question is objected to as calling for matter not shown to be within the knowledge of the witness and for his mere opinion not based upon the knowledge of any relevant facts.

C. O. Sylvester Mawson—Cross.

2321

A. As regards Chamber's and Cassell's, from the close comparison I have made in my exhibit, I see no reason for supposing that they were in any way connected with Webster's. As for the edition of Ogilvie's Imperial Dictionary which I consulted, the amount of differences between that work and Webster's Unabridged of 1847 are so great that I cannot determine if any but legitimate use has been made of Webster's dictionary. Of course, 2322
in the preparation of dictionaries, especially large dictionaries, many works of reference are necessarily consulted, but as a rule no particular book is depended upon. I think this applies to Ogilvie's dictionary, as well as to the other books.

x Q. 136. Does it not appear upon the title page of the Ogilvie's book that it was based upon Webster's?

MR. HALE: Objected to as incompetent, irrelevant and immaterial as the book will 2323
speak for itself, if produced, and further because statements upon the title page of a book do not prove themselves, and if the statement should appear it would be no evidence of the fact.

A. I believe such a statement was made on the very first edition of Ogilvie's dictionary, but as I have not compared that first edition with Webster's unabridged, I do not know how correct the 2324
statement is.

x Q. 137. Do you not know as a matter of fact that Ogilvie used a Webster's very largely in preparing the major portion of his books?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as the defendant's books have been in no way connected with Ogilvie's book, and the witness is requested to confine his answer to the ques-

2325

C. O. Sylvester Mawson—Cross.

tion as asked which calls for his knowledge of facts rather than his opinions.

MR. CARROLL: Complainant's counsel is requested not to indicate to witness how he wishes the question answered.

A. I do not know from actual knowledge to what extent Ogilvie used Webster's in the preparation
2326 of his dictionary.

x Q. 138. What is your best belief in the matter though?

MR. HALE: The same objection, also what edition of Ogilvie's dictionary is counsel referring to in his question?

MR. CARROLL: The first edition of Ogilvie's and subsequent ones which were admittedly based upon said first edition.

MR. HALE: The question is objected to as
2327 calling for witness's mere belief instead of facts out of his knowledge and complainant is not bound by a mere statement of witness's belief unless the facts upon which it is founded are stated.

A. Ogilvie mentioned Webster's name on the title page of his edition but as to how far he was justified in making this statement I cannot answer
2328 definitely without a careful examination of that book alongside of the Webster.

x Q. 139. What is your best belief? Did Ogilvie use Webster's or did he not? A. I offer no opinion unless I can speak from actual knowledge.

x Q. 140. You are asked to give your best belief.

MR. HALE: The question is objected to as having been fully answered.

A. My examination——

C. O. Sylvester Mawson—Cross.

2329

x Q. 141. Please do not dodge the question. A. My examination of any edition of Ogilvie's has not gone further back than the edition of 1883, to which I have referred in my exhibit, and so far as that particular edition is concerned, it is impossible for me to say whether certain similarities that I have found with Webster were taken by Ogilvie from Webster's Unabridged or whether they are the result of the use of a common source, as I have found many instances where I could trace particular definitions back to Johnson's, for example. I am, therefore, naturally cautious in saying to what extent Ogilvie used Webster's. 2330

x Q. 142. There are of course many words contained in Ogilvie's book, Cassell's book and Chambers' book, which do not appear at all in Webster's 1847 edition, is that not so? A. It is so.

x Q. 143. There are also many words in defendant's book which do not appear in Webster's of 1847, but which do appear in one or the other of the three books named? A. That is so. 2331

x Q. 144. Therefore, it is possible, is it not, that words contained in the three books, Ogilvie's, Chamber's and Cassell's and also contained in defendant's book and are contained in the Webster's of 1847, they may all have been taken from the 1847 edition?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and calling for a mere surmise of the witness as to what is possible. The witness's opinion of a possibility is not evidence in any sense. I object to the witness answering a question calling for his opinion of what is possible, as obviously incompetent. 2332

A. My examination of these books proves the contrary, for the reason that the dissimilarities

2333

C. O. Sylvester Mawson—Cross.

between the books you named and the Webster's book of 1847 are too considerable to allow of such a surmise being considered.

- x Q. 145 Is it your opinion then that anything which is identical in Ogilvie's, Cassell's and Chamber's and defendant's books and also identical with the same matter in Webster's 1847, cannot possibly be taken from Webster's 1847? A.
- 2334 It is my opinion that it was not so. For instance, had Webster's edition of 1847 been the principal source of Cassell's and Chamber's dictionaries or any other dictionary mentioned in my exhibit, I would have expected to have seen greater resemblances and fewer dissimilarities. This I did not find and I am driven to the conclusion, wish-
in to make an absolutely fair statement, as shown and proved by my figures that no unfair use of Webster's Unabridged Dictionary was
- 2335 made by any of the publishers of these dictionaries.

x Q. 146. What do you mean by "unfair use"? A. By "unfair use" I mean the appropriating of entire definition after definition. By fair use I would mean the consulting of all standard works and making an independent definition, the same as we do in the preparation of the New International.

- x Q. 147. You think then that the editors of the three dictionaries named, Ogilvie's, Chamber's
- 2336 and Cassell's, made fair use of Webster's Unabridged Dictionary?

MR. HALE: Objected to as calling upon the witness's opinion as to what persons long ago did in the preparing of dictionaries which have been published for a long period of time, and on which the witness has had no personal information or knowledge. Also as assuming that the editors in question made any use, a fact which has not yet been proved.

A. There is no evidence for me to believe that any unfair use was made of Webster's Unabridged Dictionary of 1847, but it would be fair to assume that the latest edition of Webster's, not the unabridged would be consulted at the time of making the respective dictionaries.

x Q. 148. The Chamber's and Cassell's books are fairly small books, are they not? A. They are small in bulk but contain considerably more words than either Price's dictionary or defendant's dictionary. 2338

x Q. 149. The definitions in them are necessarily condensed, I suppose. A. No more condensed than they are in the defendant's dictionary.

x Q. 150. More condensed than they are in the ordinary unabridged dictionaries, is that not so? A. Than in an unabridged dictionary, naturally.

x Q. 151. So that many of the definitions in Cassell's and in Chamber's may have been paraphrases from the Webster's of 1847, or some other later Webster, even if they are not identical, is that not so? 2339

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as going into the domain of pure surmise and conjecture and as asking the witness's opinion, and complainant is not bound by the witness's opinion upon such a matter.

MR. CARROLL: Complainant has attempted to qualify this witness as an expert and his opinion, even though it may not be accepted by defendant, is nevertheless binding upon complainant. 2340

MR. HALE: There is a difference between the opinion of a witness based upon facts, stated and exhibited, and the mere opinion of a witness, however expert and well qualified, as to matter of fact on which he has no knowledge. Also objected to as irrelevant and immaterial, because de-

2341

C. O. Sylvester Mawson—Cross.

defendant alleges that his book is based upon Webster's, and therefore denies that it is based upon Cassell's or Chamber's in any respect.

2342

A. Some of the definitions in Chamber's and Cassell's may have been wholly or in part paraphrases from the latest edition of Webster's at the time of the preparation of the three books, but since you ask for my opinion, I do not think for one moment that Webster's Unabridged of 1847 could even have been consulted.

x Q. 152. The definitions in Cassell's, Chamber's and defendant's book are approximately of the same length are they not in most instances? A. Approximately, yes.

2343

x Q. 153. So that you would expect to find many more definitions in defendant's book practically identical with definitions in Cassell's and Chamber's than you would identical in an unabridged Webster's, would you not?

MR. HALE: Objected to as irrelevant and immaterial, and because in conflict with defendant's contention, which is that this book is largely identical with Webster's Edition of 1847.

2344

A. It is really asking me a question of opinion, but unless unfair use had been made of the shorter dictionaries, I see no reason for supposing that such similarity as has been shown in my exhibits should exist.

x Q. 154. Do you mean to say that you would not expect to find more definitions practically identical in two abridged dictionaries than you would in an abridged book and an unabridged book? A. I think pages 30 and 31 of complainant's parallel column exhibit in part answers your question. This shows and explains why there is a certain similarity between all English dictionaries.

C. O. Sylvester Mawson—Cross.

2345

x Q. 155. (To stenographer.) Will you please repeat the question?

MR. HALE: The repetition of the question is objected to on the ground that it is already answered.

(Question read.) A. Over and above the percentage shown in my exhibit I would not.

x Q. 156. Absolutely irrespective of your exhibit will you give a straight answer to the question. Would you not expect to find more definitions practically identical in two abridged dictionaries than in an unabridged and an abridged dictionary? 2346

MR. HALE: Objected to as having been fully answered and also as irrelevant and immaterial.

A. I would expect the unabridged books to contain the whole of the senses and a large percentage of the actual words found in the small dictionaries. 2347

x Q. 157. (To stenographer.) Will you read the question again? (Question read.) A. Not necessarily in regard to the actual words used.

x Q. 158. Why not? A. It seems more reasonable there would be found a greater similarity between an unabridged book and the book on which it was based than between small dictionaries prepared independently. 2348

x Q. But take two small books both based upon a large book, would you not expect to find many more definitions in the small books practically identical than definitions identical in the small book and the book upon which it was based? A. Assuming that the small books are positively based upon a given larger work, I would expect to see a great similarity between the two books themselves, and of course the book on which it was based.

2349

C. O. Sylvester Mawson—Cross.

x Q. 159. Would you not expect to find greater similarity between the abridged works, than between the abridged books and the unabridged book on which it is assumed to be based?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and asking the witness to guess. The witness is not required to guess.

2350

A. No, I think that if two books were independently based on a larger work there would be a marked similarity between the three of them.

x Q. 160. Would not you expect to find a greater identity between the short definitions of the abridged books than between the short definitions of the abridged books and the long definitions of the unabridged book? A. Not necessarily so, for the reason that in an unabridged book a brief definition is first of all given and may, or may not, be amplified, as in our new International Dictionary. In making an abridgement of such a work the shortened form which comes at the beginning in the larger dictionary would likely be taken and if the two books were independently based on that larger work they would take the brief definition, omitting the other. There would be that striking similarity to which I have referred, for that reason.

2351

x Q. 161. That striking similarity between the two small books? A. Between the two small books and the dictionary on which they were based.

2352

x Q. 162. The two small books would have practically the same text then throughout, would they not? A. That would depend largely on the idiosyncrasy of the particular editor and the market for which the work was intended.

x Q. 163. Assuming that the editors of each of the small books were normal men, having no more idiosyncrasy than the average editor, would not the two books be probably identical?

C. O. Sylvester Mawson—Cross.

2353

MR. HALE: This question and the further continuing of this line of examination is objected to as incompetent, irrelevant and immaterial and highly speculative.

A. If based upon the same unabridged work there would be a great amount of identity between them.

x Q. 164. Do you know how many words or terms were defined in Johnson's? A. Not more than 12,000, if as many. I don't recollect exactly.

2354

x Q. 165. How did you compute the percentages which you have given in these various exhibits, namely, 46%, 76½%, 45%, etc.? A. By an actual count of the identical words used in the respective dictionaries in defendant's book.

x Q. 166. So that if there were 100 words in the long definition of Webster's unabridged and only 45% of those words were taken in the abridged dictionary of the defendant, you then came to the conclusion that 45% of Webster's had been taken in defendant's book.

2355

MR. HALE: Objected to as misrepresenting witness's testimony.

A. You misunderstood my answer, I made no count whatsoever of the words that were not taken. I merely counted the words that were identical. I didn't say they were taken, but they were identical in corresponding definitions.

x Q. 169. What would the 45% be then? A. By a count of the words used in defendant's dictionary and then counting the whole of the words which are identical in Webster's Unabridged, only 45% of defendant's dictionary can be accounted for in this manner, assuming that Webster's had been used at all.

2356

x Q. 170. That is all.

(SIGNATURE WAIVED.)

DEPOSITION CLOSED.

2357

IN THE
DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

vs.

Equity 8-161

2358

CUPPLES & LEON Co.,
Defendant.

G. & C. MERRIAM COMPANY,
Complainant,

vs.

Equity 8-162

2359 THE SYNDICATE PUBLISHING COM-
PANY,
Defendant.

Depositions on behalf of complainant, in re-
buttal, taken by consent before Kate S. Holmes,
a Notary Public duly authorized to administer
oaths, at the office of Reilly & Britton Company,
1006 South Michigan Avenue, Chicago, Illinois, on
2360 the 12th day of July, 1912, at 11.30 o'clock A. M.
Present:

MR. WILLIAM B. HALE, counsel for com-
plainant;

GOULD & WILKIE, solicitors for defendant
CUPPLES & LEON Co., MR. LAUREN CAR-
ROLL, of counsel;

STRONG & CADWALADER, solicitors for The
Syndicate Publishing Company, Mr.
LAUREN CARROLL of counsel.

Sumner C. Britton—Direct.

2361

STIPULATION.

It is stipulated between counsel for the respective parties that the depositions of witnesses produced and examined before Kate S. Holmes, may be taken stenographically and subsequently reduced to typewriting by her or by a competent typewriter operator known by Kate S. Holmes, and that the signatures of the witnesses so produced and examined are waived.

2362

SUMNER C. BRITTON, a witness called on behalf of the complainant, having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. State your full name, age, residence and occupation? A. Sumner C. Britton; forty-six years old; publisher at 1006 South Michigan Avenue, Chicago. 2363

Q. 2. Are you a member of the firm or company known as Reilly & Britton Company? A. I am President of the company.

Q. 3. Does that company handle a book called "Webster's Condensed Dictionary"? A. Yes, sir.

Q. 4. How long has it been handling that book? A. About seven years, to the best of my recollection. 2364

Q. 5. Is the book published by your concern, or if not, by whom is it published? A. It is manufactured for our account by the Merriam Company.

Q. 6. Is the Merriam Company the owner of that book? A. Yes.

Q. 7. And you handle it under an arrangement with them? A. We do.

Q. 8. Is that arrangement an oral or written arrangement? A. Oral.

2365

Sumner C. Britton—Direct.

Q. 9. Will you please state the general terms of it? A. They furnish the book to us at a given price. The books are shipped to us on our order from time to time.

Q. 10. Is there anything in that arrangement giving the Reilly & Britton Company any exclusive rights in that book, if so, what is it? A. They do not sell it to any other customer.

2366

Q. 11. When the Merriam Company, itself, desires a copy of the "Webster's Condensed Dictionary," how do they get it? A. They order it and the same is billed to them at a price agreed upon.

Q. 12. In other words, if they wish any copies of that book they first go to you? A. They do.

Q. 13. Since the making of that arrangement has the Reilly & Britton Company exploited and sold "Webster's Condensed Dictionary" by means of the newspaper coupon plan? A. Yes.

2367

Q. 14. Did the Merriam Company have anything to do with that plan or distribution? A. Nothing whatever.

Q. 15. When did the Reilly & Britton Company first put out this book through newspapers upon that plan? A. The first contract was with the Boston American. The arrangement was entered into late in July of the year 1910, the first advertisements of which appeared in the Boston American approximately August 29th, 1910. The first shipment of books to the Boston American was made on August 20, 1910.

2368

Q. 16. What did you personally have to do with introducing this book to the Boston American, and with their advertising campaign, if anything? A. I went to Boston to see them after having corresponded with them. I submitted samples and prices and supplied them with data from which to build their advertising.

Q. 17. Did you see that advertising when it ap-

peared in the Boston American, and are you familiar with the nature of it? A. I am.

Q. 18. Have you any sample copies of it which you can now produce? A. I have not, for the reason that in putting on various other deals over the country I used those copies that I had; but undoubtedly they are a part of the files of the Boston American.

Q. 19. I presume you are aware that The Syndicate Publishing Company has exploited and sold through a newspaper coupon scheme, a dictionary which they call "Webster's New Standard Dictionary," and sometimes "Webster's New Illustrated Dictionary," are you not? A. I am so informed. 2370

Q. 20. Do you know about when the campaign of that company commenced? A. To the best of my knowledge in the early part of the year 1911.

Q. 21. Your company was, then, first in this field? A. To my best knowledge. 2371

Q. 22. Did you observe any of the newspaper advertising of The Syndicate Publishing Company issued in connection with this plan of campaign through the newspapers? A. Very often.

Q. 23. What did you observe in connection therewith and as compared with your advertising? A. The first advertisements that I saw were those of the Pittsburg Post, and I was impressed with the fact that the plan and scope of their advertising was so similar to the advertising that was done on the Boston American, that were the two sets of advertisements not together, one could hardly tell but what the same copy was used. 2372

MR. CARROLL: I object to this answer and move that it be stricken from the record as a conclusion of the witness, the advertisements speaking for themselves, and the advertisements not being produced; and as incompetent, irrelevant and immaterial.

2373

Sumner C. Britton—Direct.

Q. 24. Did you observe any advertisements of the defendant, The Syndicate Publishing Company's dictionary in the Pittsburgh Post which were closely similar and in part identical with advertisements of your book which had previously appeared in the Boston American? A. One in particular, a picture of Uncle Sam; that originated with the Boston American.

2374

Q. 25. Do you recall having observed other cuts, phrases and catch lines that were similar to your advertisements in the Boston American?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, the advertisements themselves being the only competent evidence as to their contents.

MR. HALE: The witness has explained the absence of such advertisements. An effort will be made to produce them before complainant's rebuttal proofs are closed.

2375

A. At the time I noticed many.

Q. 26. Can you recall from memory what they were? A. Well, the phrase "Bound like a Bible."

Q. 27. Was that a phrase of your origination, or what is the fact in regard to it? A. I have used that phrase in connection with dictionaries for more than ten years.

2376

Q. 28. Is that phrase more or less common to the trade in connection with books bound in limp leather like an Oxford Bible? A. It is.

Q. 29. Was the Pittsburg Post campaign of The Syndicate Publishing Company's book the first that you noticed in connection with that book? A. The first that came under my observation.

Q. 30. Are you acquainted with Mr. J. F. Murphy? A. I am.

Q. 31. What connection has he with your company, and has he had in the last few years? A. He

has sold dictionaries on commission for account of the Reilly & Britton Company.

Q. 32. He is an employe then, of the Reilly & Britton Company? A. No.

Q. 33. Well, how would you describe it? A. Mr. Murphy, being a circulation promoter, agreed to specify our dictionary in connection with his work, the book to be billed to the newspaper at the price agreed upon between him and the newspaper, the difference in the price the newspaper paid and that which we made to him to be paid to him as a commission; otherwise no connection whatever. 2378

Q. 34. Did Mr. Murphy introduce the "Webster's Condensed Dictionary" to various newspapers under that arrangement? A. He did.

Q. 35. And it was all done under the contract with the Reilly & Britton Company? This arrangement with the Reilly & Britton Company? A. Yes, sir.

Q. 36. And among others did he, under this arrangement, introduce "Webster's Condensed Dictionary" to the St. Louis Republic? A. He did. 2379

Q. 37. And Reilly & Britton Company furnished these books for the St. Louis Republic? A. Yes, sir.

Q. 38. And these books were the books Reilly & Britton Company purchased from the Merriam Company under the arrangement first referred to by you, is that correct? A. They were.

Q. 39. Please give the trade description of the binding in which "Webster's Condensed Dictionary" was offered to the newspapers by Mr. Murphy? A. I couldn't say, he being his own maker of advertising. 2380

Q. 40. I think you misunderstood the question. I wish to know how the binding of "Webster's Condensed Dictionary," the limp leather one, would be described to the trade? A. It was a seal grain. The trade term is known as seal grain Morocco.

MR. HALE: I think that is all.

2381

Sumner C. Britton—Cross.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 41. You stated that the present arrangement which Reilly & Britton Company have with the Merriam Company with reference to "Webster's Condensed Dictionary" was oral? A. I did.

x Q. 42. When was that arrangement made? A. At the time that we asked them to make a dictionary for us.

2382 x Q. 43. Between whom was it made? A. Particularly with Mr. Washburn, but I think all the other directors of the company were present at the interview.

x Q. 44. Who was present on your side? A. Mr. Reilly, probably. It is some time ago. It is more than likely he was.

x Q. 45. You personally were not present? A. I was present.

2383 x Q. 46. You were present, and possibly Mr. Reilly? A. And possibly Mr. Reilly.

x Q. 47. When was it? A. I said a while ago I thought approximately seven years ago we made that deal. We had prior deals to that, however. That was one reason why we didn't have a written arrangement, we didn't need written instruments between us.

2384 x Q. 48. Was there ever any correspondence concerning this contract? A. Probably, affecting some variations of prices and binding from time to time.

x Q. 49. Was there never any letter of any kind embodying the terms of the agreement? A. No formal contract was ever entered into. We have written them, of course, many times in relation to this dictionary business.

x Q. 50. I repeat my question: Was there never any letter written concerning the terms of that agreement? A. Not that I know of.

x Q. 51. You have been going on for seven years under an oral agreement made between you and

the Merriam Company? A. Yes. We deal nicely together; we have never had a word for a longer connection than that.

x Q. 52. During the whole of that seven years has the arrangement always been exactly the same? A. No, I say we may have had correspondence with them in reference to changes of binding and prices.

x Q. 53. Precisely how did the arrangement 2386 work? Did they alaways ship all books to you direct? A. They manufactured their books at a certain plant.

x Q. 54. Where was that plant? A. In Chicago. Want the name? Hill Binding Company.

x Q. 55. Did they manufacture all of them in Chicago? A. All of the "Condensed" dictionaries. We handle other Webster's dictionaries besides the "Condensed."

x Q. 56. Do the G. & C. Merriam Company own 2387 the Hill plant? A. Oh, no, they contract for the work.

x Q. 57. The G. & C. Merriam Company still own the plates of the dictionary? A. Yes.

x Q. 58. Have you a large stock of these dictionaries on hand at the present time? A. A large stock of the book in various stages of manufacture are always in the hands of the manufacturer; we order them in such quantities from time to time as we want them.

x Q. 59. Are they then delivered to you here at 2388 this office? A. Not always; sometimes they are f.o.b. cars.

x Q. 60. What is the usual practice? A. The usual practice is f.o.b. cars. They ship on our order.

x Q. 61. As a rule then they get the order and they ship right out from the factory? A. They ship from the factory.

x Q. 62. Who receives the money? A. The Mer-

2389

Sumner C. Britton—Cross.

riam Company bill the books to us on the showing of the bindery that they have shipped on our order, the books.

x Q. 63. And you collect? A. We collect.

MR. HALE: From the customer, you mean?

A. From customers.

2390

Mr. Carroll:

Q. 64. What other Webster's dictionaries do you handle? A. Webster's Unabridged Dictionary.

x Q. 65. What edition? A. The edition of 1903.

x Q. 66. Have you a copy of that book here? A. We have.

x Q. 67. May I see it?

2391

MR. CARROLL: Witness produces a copy of the book mentioned above, with the statement that this is the same book as has already been introduced in evidence in connection with the deposition of Max Hesslein, a witness called by defendant.

x Q. 68. Is this one of the regular G. & C. Merriam Company books? A. We sell that for their account only. We are only agents for the sale of it.

2392

x Q. 69. Just how are you agents for the sale of it? A. The book belongs to them, they manufacture it and we are their exclusive selling agents for that book.

x Q. 70. Where is that book manufactured? A. That is manufactured at Albany, New York, that edition.

x Q. 71. Your arrangement about this book then, is essentially different from the arrangement with reference to the "Condensed" dictionary? A. Absolutely it is.

x Q. 72. Do you get a commission on each book that you sell? A. Yes, sir.

x Q. 73. Do they sell any books through their own agents? A. No, sir, not of this edition.

x Q. 74. Are you familiar with this book? A. I was brought up on it.

x Q. 75. I see that it bears on the reverse side of the title page the copyright notice dated 1864.

A. Yes, sir.

2394

x Q. 76. Is this not substantially the same book originally published by the G. & C. Merriam Company in 1864? A. With revisions, as also noted on the reverse of the title page when such revisions were made.

x Q. 77. Is it not printed from the same plates? A. Not at all.

x Q. 78. Do you know that of your own knowledge? A. I do know that of my own knowledge.

x Q. 79. When were the plates from which it is printed made? A. I am not in position to say because that isn't a part of my knowledge. In other words, the Merriam Company would know better than I.

2395

x Q. 80. How do you know they are not printed from the same plates? A. Because with each revision new plates are necessarily made.

x Q. 81. You mean to say that each time the Merriam Company revises any one of their dictionaries they make entirely a new set of plates?

A. Not necessarily.

2396

x Q. 82. Well then, why did you make your former statement? A. For the reason that they might have made a new set of plates on this whole book, and probably did, in 1903.

x Q. 83. You really don't know whether they did or not? A. I don't know.

x Q. 84. So really, as far as you know, they may be the same plates as the 1864 edition? A. Without I appeal to my knowledge as a publisher, and

experience as a publisher, that would teach me that it would be absurd.

x Q. 85. What was your arrangement with the G. & C. Merriam Company with reference to the "Condensed" dictionary before the conference which you have stated was approximately seven years ago, at which you made the present arrangement? A. Nothing as to the "Condensed" before we made the arrangement, except that we asked them to make it for us. Prior to that time we were their exclusive selling agents since 1903 for the sale of Webster's Unabridged Dictionary.

x Q. 86. Prior to 1903 did you handle any of Webster's dictionaries at all?

MR. HALE: Objected to as incompetent, and immaterial and not proper cross-examination.

2399 A. Yes, sir.

x Q. 87. What dictionaries were they? A. Webster's Unabridged, when I was formerly connected with another company we handled the Unabridged dictionary; after we started in business why we made a contract with Merriam. That was an older edition.

x Q. 88. What was the name of that company? A. The George M. Hill Company.

x Q. 89. Did you ever handle any other Webster's dictionary? A. Prior to that we certainly did handle some so-called Webster's dictionaries.

x Q. 90. Why do you say "so-called"? A. Because it is a fact that they were photographed reprints of the old 1847 dictionaries with some outside revisions.

x Q. 91. Then if they were a reprint of the 1847 edition is it a Webster's dictionary? A. It is so far as the plates are concerned; they were original Webster plates, but not insofar as they relate

to plates that have been inserted for the purpose of putting new words in an old obsolete book.

x Q. 92. Still you sold the book as a regular Webster's dictionary, did you not? A. Sold it for what appeared on the back bone of it. A matter of title. It has long since passed from my mind.

x Q. 93. Have you ever sold any other Webster's dictionaries? A. None.

x Q. 94. Were you ever connected with the Madison Book Company? A. I was. 2402

x Q. 95. In that connection did you sell any other Webster's dictionaries? A. I sold then a so-called Webster's dictionary.

x Q. 96. Did you at that time refer to it always as a so-called Webster's dictionary? A. I did not.

x Q. 97. Why have you adopted the old phraseology? A. Because at that time the books that we sold were not made by us, but were made by another concern and we simply sold them; bought the dictionaries and resold them. 2403

MR. HALE: Complainant's counsel has allowed the cross-examination to take rather a wide scope, not wishing to object unless necessary, but at this point complainant's counsel objects to this line of examination as incompetent, irrelevant and immaterial, as not proper cross-examination, and, therefore, an attempt by defendant to introduce new evidence in chief in aid of its defense after its time for taking testimony has closed and its defense has been rested. 2404

x Q. 98. Isn't that precisely what you say your arrangement is with the G. & C. Merriam Company to-day in reference to the "Condensed" dictionary? A. The difference would be in circumstances, if any.

x Q. 99. In what circumstances? A. The difference being that at no time since we have sold the

2405

Sumner C. Britton—Cross.

genuine Webster's dictionary have we sold anything that purported to be a Webster's dictionary.

x Q. 100. Do you consider the Webster's Unabridged dictionary a genuine Webster's dictionary?

2406

MR. HALE: Objected to upon the grounds last stated, and the witness is requested to suspend his answer until directed by the Court to answer this question. I shall make a similar request to any further questions along this line.

MR. CARROLL: The Examiner is requested to certify this to the Court.

MR. HALE: The witness suspends answer as requested.

2407

MR. CARROLL: I ask the Examiner to certify this question to the Court for the purpose of ruling upon the propriety of the question, and for the purpose of directing this witness to answer the same.

x Q. 101. What was the name of the Webster's dictionary which you say you sold through the Madison Book Company?

MR. HALE: Same objection and same request to the witness to suspend his answer until the propriety of this line of examination has been ruled upon by the Court.

2408

x Q. 102. How do you advertise the Webster's Unabridged dictionary? A. We advertise ourselves as exclusive selling agents. The book is already well advertised and we don't have anything to do with that.

x Q. 103. Since you have been selling this book have you ever sold any other Webster's dictionary not published by the G. & C. Merriam Company?

MR. HALE: The same objection and same

request to the witness. And in explanation of this request complainant's counsel states that he is taking his rebuttal testimony and purposes and intends to keep it strictly such, and he is not willing that defendant shall, by improper cross-examination, attempt to introduce new evidence in chief in aid of its defense. This witness was called and testified in chief solely in regard to the sale of the Webster's Condensed Dictionary, in rebuttal of the testimony of Mr. Swift, defendant's witness, as to the sale of that book through the newspapers; the cross-examination should be limited to matters referred to in the direct examination. 2410

x Q. 104. Who wrote the advertisements for the Boston American, which you have referred to? A. They were written very largely by the editorial department of the Boston American from the data supplied by me. 2411

x Q. 105. What was the nature of the Boston American's scheme? A. They offered to present to every one bringing a certain number of coupons cut consecutively from their daily issue, plus a certain sum, a "Condensed" dictionary.

x Q. 106. Are you sure that they used those words, "we offer to present"? A. No, the question didn't ask for any verbatim words used by the American. 2412

x Q. 107. Was not the Boston American's scheme really, in terms, an offer of the book at a reduced price? A. It was.

x Q. 108. Was not the great distinction between the scheme as put on by the Pittsburg Post and that as put on by the Boston American, the following: The Pittsburg Post advertised its dictionary as a gift to any one bringing six coupons, the 89 cents or 98 cents being called an expense

2413

Sumner C. Britton—Cross.

bonus, to cover necessary expenses of handling; whereas the Boston American simply advertised its dictionary as a two dollar dictionary offered for the reduced price of 98 cents, the decrease in price being given to any one bringing in six coupons cut?

2414

MR. HALE: The question is objected to as on its face asking for a distinction between two things as to which there is no distinction, except possibly in the words of description.

2415

MR. CARROLL: If counsel for complainant had spent many weeks in the circulation department of a newspaper he would immediately appreciate the very distinct psychological difference between the two methods of offering the books, and it was this very difference which made the Pittsburg Post's scheme so much more successful than that one which was adopted by the Boston American.

MR. HALE: Does counsel mean to suggest that the success of such schemes depends upon making the public think they are getting some which they do not get?

MR. CARROLL: The success of such schemes unquestionably depends upon every single word put into the advertising.

2416

MR. HALE: Counsel inquires where in the record the evidence will be found that the defendant, Pittsburg Post's distribution was a greater success than the Boston American's distribution of Reilly & Britton's Webster's Condensed Dictionary?

MR. CARROLL: A comparison of the advertisements which appeared in the Boston American when produced by counsel for complainant, with the advertisements subsequently used by the St. Louis Republic,

will show that those used in the St. Louis Republic contained the little "psychological kink" mentioned, and this, in itself, is sufficient proof that the change was considered an important one by the distributors of the "Condensed" dictionary.

Question 108 read.

A. The difference, to my mind, is that either plan would produce the same effect, practically, in the public mind. 2418

x Q. 109. Why did you adopt the other plan in St. Louis, then? A. I did not adopt it.

x Q. 110. Who did adopt it? A. Mr. Murphy ran his own campaign in St. Louis. We only ship books on orders and bill them and collect for them.

x Q. 111. Can you give a list of the cities in which you distributed the "Condensed" dictionary through the newspaper plan? A. I probably could, but why should I? 2419

x Q. 112. Did you ever sell the book through the newspapers in Pittsburg? A. I couldn't say. It appears to me that I had a dictionary deal on with the Dispatch, a number of years ago, but nothing similar to this plan.

x Q. 113. Do you remember approximately how long ago it was? A. Well, more than five years ago.

x Q. 114. Have you any idea how many books you sold? A. No, I couldn't state; it wasn't a large deal, I know that. 2420

x Q. 115. Probably less than 5,000? A. Probably less than 5,000.

x Q. 116. The "Uncle Sam" cut that you have spoken of, are you certain that that was used in the Pittsburg Post? A. That was my impression, when I first saw it.

x Q. 117. You haven't a copy of the Pittsburg Post, I presume, which contains it? A. No.

2421

Sumner C. Britton—Cross.

x Q.118. Is it not really a fact that the first time that this cut was used in connection with any of defendant's dictionaries, was when it was used by the New York American, the cut having been obtained from its allied paper, the Boston American?

2422

MR. HALE: Objected to as assuming facts as to the alliance of those papers which are not matters of record. Further objected to as calling for a fact obviously not within the knowledge of the witness, as to when the defendant first used a particular ad, as to which defendant has exact knowledge and this witness has not.

2423

MR. CARROLL: The question is made necessary by the fact that this witness has already testified as to the use of this ad, if he has no knowledge of it then his answer to that question should be stricken from the record.

MR. HALE: The question referred to the first use by defendant. The witness may know when he first saw it, but he may not know whether the first one he saw was the first use made by defendant.

2424

A. To the best of my knowledge and belief the first time I saw a reproduction of the Boston American, "Uncle Sam" picture was in connection with the Pittsburg Post.

Q. 119. You are not sure of that, however? A. I said, to the best of my knowledge and belief.

x Q. 120. Can you state the date when you believe you saw it in the Pittsburg Post?

MR. HALE: Objected to unless the witness can state it with some certainty and not as a mere guess, especially as the date of the Pittsburg Post campaign is already of record in this suit.

MR. CARROLL: The witness' whole testimony on this point is obviously a mere guess.

A. I can't answer accurately.

x Q. 121. Was it the month of April, 1911? A. It might have been, I couldn't say.

x Q. 122. Was it in the month of November, 1910? A. In 1910? It was not.

x Q. 123. Can you give any approximate fixing of the date, then, whatever? A. I should say early in the fore part of the year 1911. 2426

x Q. 124. When did you make your arrangement with Mr. Murphy? A. Somewhere around the first of May, 1911.

x Q. 125. Was there any correspondence between you and Mr. Murphy? A. No, sir.

x Q. 126. Where was the arrangement made? A. Mr. Murphy called on me at our office.

x Q. 127. What makes you think it was in the month of May? A. Because we put on a newspaper deal very soon afterwards, which I think began the latter part of May. 2427

x Q. 128. Where was that? A. I have no particular objection to stating, but I think it is a private business matter. I will give it to you. The Times Union, Albany, New York.

x Q. 129. Was that the first time that you had seen Mr. Murphy when he came to your office? A. The first time I met him. 2428

x Q. 130. Never had any correspondence with him before that? A. None.

x Q. 131. When these various newspapers were handling the "Condensed" dictionary, how did you keep in touch with the sales?

MR. HALE: Objected to as irrelevant and immaterial.

A. Mr. Murphy would write in an order to ship.

2429

Sumner C. Britton—Cross.

x Q. 132. Who would they be billed to? A. Be billed to the newspapers.

x Q. 133. By whom? A. By Reilly & Britton Company.

x Q. 134. Did you ship them from this office, here? A. Shipped them from the bindery, usually.

2430 x Q. 135. Why did so many of the advertisements of the St. Louis Republic, for example, feature the name of G. & C. Merriam Company? A. I presume because the Merriam Company's name in connection with a dictionary is usually a guarantee of excellence.

x Q. 136. Do you think it is a guarantee of excellence in this case? A. I do.

x Q. 137. You think the "Condensed" dictionary is an excellent book?

2431 MR. HALE: Objected to as incompetent, irrelevant and immaterial, and going beyond the issues, this book not being in issue in this case.

A. It has been very largely copied by imitators, which would lead one to believe that it is an excellent book.

x Q. 138. Do you know any book which has copied it? A. The plan of it.

2432 x Q. 139. The plan of the "Condensed" dictionary? A. The plan of the "Condensed" dictionary.

x Q. 140. You don't know any book that has copied the "Condensed" dictionary by name then? A. Not by name.

x Q. 141. So you really didn't have any book in mind when you said that? A. I had in mind that the manner of handling words through the text in order to get a large number of words through the text, as this book shows, and that in making the scope of the book as large as possible the qualifi-

cations and words have been imitated. I can give you the name of one book very similar to it, which is the one called "Webster's Twentieth Century Dictionary."

x Q. 142. Who published that book? A. I think it was published by W. R. Van Zant & Company.

x Q. 143. Ever published by the Madison Book Company? A. No; that is, we never owned the plates, we may have had a number of them.

2434

x Q. 144. Was it published with your imprint? A. Yes, it might have been, at one time.

x Q. 145. Is this a copy of that book (handing witness book)? A. Yes, sir.

MR. CARROLL: I ask to have it marked for identification. Said book marked "Referred to by witness Britton, July 12, 1912, K. S. Holmes."

x Q. 146. Is this one of your catalogues advertising that book (handing witness catalogue)?

2435

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination, and as an attempt on the part of defendant to introduce new proofs in chief after resting his case, and during complainant's time for taking rebuttal proofs, and the witness is requested to suspend his answer until directed to answer by the Court.

2436

MR. CARROLL: The attempt of counsel for complainant to defeat proper cross-examination is protested.

MR. HALE: Complainant's counsel, by all proper legal means, will limit the cross-examination of this and all other witnesses to its proper scope. Witness suspends answer as requested.

2437

Clarence W. Taber—Direct.

MR. CARROLL: I ask to have this catalogue marked for identification.

Said catalogue marked, "Referred to by witness Britton, July 12, 1912, K. S. Holmes."

MR. CARROLL: That is all with this witness.

2438

CLARENCE W. TABER, a witness called on behalf of the complainant, having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. Please state your name, age, residence and occupation? A. Clarence W. Taber; Evanston, Illinois; general agent for the G. & C. Merriam Company, Springfield, Massachusetts; age, 41.

2439

Q. 2. How long have you been connected with the Merriam Company? A. Nearly five years.

Q. 3. Do you remember being commissioned by the Merriam Company to interview Mr. Edward T. Roe in connection with a dictionary called the "Crown Dictionary" published by Louis Klopsch, of the Christian Herald? A. I do.

Q. 4. When was that? A. In the month of April, 1912.

2440

Q. 5. Did you see Mr. Roe? A. I did.

Q. 6. And have a conversation with him in regard to this book? A. I did.

Q. 7. Please state in your own way what you said to him and what he said to you in this conversation.

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, Mr. Roe not having been called for cross-examination, and statements made to this witness

Clarence W. Taber—Direct.

2441

not being binding upon either of the defendants, and on all the further grounds on which counsel for complainant objected to the deposition of Lauren Carroll taken at Springfield.

MR. HALE: This testimony is offered in rebuttal of similar testimony offered by counsel for defendant, Mr. Lauren Carroll, who at Springfield offered in evidence what purported to be a letter from the said Edward T. Roe, which letter was placed at length upon the record. 2442

A. I asked Mr. Roe if he could or would give us any information as to the source from which he had made the dictionary sold by him to the Christian Herald.

Q. 8. Did he give you the name of the dictionary which he said he used in compiling said "Crown Dictionary"? A. He said it was an English dictionary, the exact title of which he would not give off hand, but that it was either the Imperial Students' Dictionary or the Students' Imperial Dictionary published in London. 2443

Q. 9. Did he say anything as to whether he actually used the English or an American edition of the work specified?

MR. CARROLL: Same objection as made heretofore.

It is stipulated that the same objections shall be made to each one of these questions. 2444

A. He said he procured two copies of the English edition from A. C. McClurg & Company, and that he pasted up the sheets as is customary in such work and made his dictionary from those original sheets.

Q. 10. What, if anything, did he say as to what

2445

Clarence W. Taber—Direct.

use he made of any edition of Webster's Dictionary in the composition of his work? A. He said that he only used the current American dictionaries in a legitimate way, and that this book was not based in any way upon the 1847 edition of Webster's Dictionary published by G. & C. Merriam Company.

2446

Q. 11. Did he say whether or not he used any prior edition of Webster's Dictionary? A. He said he had not used any prior edition of Webster's Dictionary for that purpose.

2447

Q. 12. Did he say anything as to the extent to which his book would correspond with the English dictionary which he said he used? A. He said it was almost identical with the English edition with the exception of some new words that he had added and some English spellings and phraseology that he had changed to suit the needs of the trade in this country.

Q. 13. Having obtained this information, what did you do? A. I asked him to make an affidavit to that effect; he refused to do so.

2448

Q. 14. What reasons did he assign for that refusal? A. He stated that he had been approached by counsel for the defendants to make a similar affidavit for their side of the case, and that he could not conscientiously or honorably do so, and that he had promised them that he would not make a similar affidavit for the other side, and that as he was engaged as an editor for a publisher of another so-called Webster's Dictionary, he did not feel as though he should drag a third party into the case.

Q. 15. Did you at any time or in any form, either in substance and effect, request Mr. Roe not to make an affidavit for the defendants in this case? A. I never did.

Q. 16. Did Mr. Roe show you the affidavit which he had been requested to make and sign on be-

half of the defendants? A. He did, and he said there was not a word of truth in it.

Q. 17. Did you read that affidavit? A. I did.

Q. 18. Do you remember anything which it contained? A. Not specifically, except that it was to the effect that the dictionary was based upon, I think it was the 1847 edition of Webster's Dictionary published by the G. & C. Merriam Company.

2450

Q. 19. And was that statement the statement to which Mr. Roe specifically referred when he stated that there was not a word of truth in the affidavit? A. It was.

Q. 20. And for that reason he would not sign it A. It was.

Q. 21. Did you communicate all these facts to the Merriam Company? A. I did.

Q. 22. And that was the first information which they had as to the name of the book used by Mr. Roe, so far as you know? A. It was.

2451

Q. 23. Can you fix the precise date of this interview you had with Mr. Roe? A. Only by referring to to what correspondence I might have had with the company at the time; it was about April 22nd or 23rd.

MR. HALE: You may cross examine.

CROSS-EXAMINATION by Mr. Carroll:

x. Q. 24. When was the first time you saw Mr. Roe? A. I couldn't tell exactly, I should judge it was about eight or nine years ago. 2452

x Q. 25. When was the first time you spoke to him about the so-called "Crown Dictionary"? A. I talked to him in regard to it long before I was connected with the Merriam Company.

x Q. 26. Approximately when was that? A. It might have been six years ago, it might have been seven or eight years ago, I couldn't tell you.

2453

Clarence W. Taber—Cross.

x Q. 27. What did he say to you about it at that time? A. Why, he was offering an excuse for his reason for making that dictionary when he was at the same time making a similar dictionary for the other publisher, and the other publisher didn't know anything about it. He was supposed to be the editor of the Laird & Lee dictionary, and while employed in that capacity he had made or sold during that time to the Christian Herald the copy of the "Crown" dictionary which he was also supposed to be the author of.

2454

x Q. 28. Did you see him from time to time then? A. I did.

x Q. 29. Did you know him quite well? A. I did.

x Q. 30. When did you first speak to him about this present litigation in any way? A. Do you refer to the Syndicate litigation?

2455

x Q. 31. Yes. A. I don't remember whether it was at that interview in April or whether I had spoken to him in regard to it a few days or a few weeks previously to it.

x Q. 32. Did you speak to him about it before January, 1912? A. I might have done so; he was interested in the Laird & Lee dictionary and I was interested in the others and news of that kind, of course, would be discussed between us should we happen to meet.

2456

x Q. 33. So that you might very well have discussed the possibility of his testifying in the case until the interview at his home in April, 1912? A. No, I did not discuss his testifying in that case until the interview at his home in April, 1912.

x Q. 34. You are absolutely sure of that? A. Absolutely sure.

x Q. 35. Did you ever ask him by he put the statement on the title page, "Based upon the Unabridged Dictionary of Noah Webster, LL.D."?

MR. HALE: Objected to as incompetent,

irrelevant and immaterial, and because there is no evidence in this case that Mr. Roe did place that statement upon the title page of defendant's dictionary.

A. I am not certain whether I did or not.

x Q. 36. What is your best belief in the matter?

A. I couldn't answer the question any more intelligently on account of associating him with the Laird & Lee dictionary over which we have had so many discussions. 2458

x Q. 37. You said you asked him to make an affidavit some time in April? A. I did.

x Q. 38. What was the purpose of that affidavit?

A. That the information he gave to me personally might be produced in legal form that it could be used in court as evidence.

x Q. 39. Didn't you at that time ask him why he put the statement on the title page, "Based upon the Unabridged Dictionary of Noah Webster, LL.D."? A. If I did so I couldn't state it as a fact. 2459

x Q. 40. How do you reconcile his two statements, namely, the one on the title page that it is based upon the Unabridged Dictionary of Noah Webster, and the other one which you say he made, namely, that he had not used the Unaridged Dictionary of Noah Webster in the preparation of the book at all?

MR. HALE: Objected to as incorrectly assuming that the witness reconciled or tried to reconcile Mr. Roe's statement with the statement upon the title page of the dictionary. 2 60

A. I knew it couldn't be reconciled so I didn't try to do so.

2461 *Clarence W. Taber—Re-direct—Re-cross.*

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 41. If you did speak to Mr. Roe about the Syndicate matter at all early in 1912, you did not obtain the name of the English book which he used until April 22, 1912, as stated by you, is that correct?

2462 MR. CARROLL: I object to the form of the question on the ground that it has only been testified to by the most incompetent hearsay testimony that Mr. Roe ever used any English book in the preparation of the so-called "Crown Dictionary."

2463 MR. HALE: On the contrary, it has been incontrovertibly proved that the compiler of defendant's dictionary did use an English dictionary, to-wit, the British Empire Dictionary, and the book itself has been produced and compared at length with defendant's dictionary, thus corroborating Mr. Roe's statement to this witness.

2464 (The Witness): I desire to make a correction. I did have a conversation with Mr. Roe in regard to the Syndicate dictionary a short time previous to my meeting him at his home in April, 1912. I had asked Mr. Lee, Mr. Roe's employer, for information in regard to the source from which Mr. Roe had made the "Crown Dictionary," and Mr. Lee took me to Mr. Roe in his office and had me ask Mr. Roe the direct question, having given me the information desired in a general way I felt I had sufficient material to base an affidavit upon.

RE-CROSS EXAMINATION by Mr. Carroll:

Re-x Q. 42. Can you fix approximately the date when you were with Mr. Lee and interviewed Mr. Roe? A. I should think it would be within two or three weeks prior to the latter part of April, 1912.

J. F. MURPHY, a witness called on behalf of the complainant, having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Hale:

Q. 1. State your full name, age, residence and occupation? A. John F. Murphy; newspaper promoter; I live at 5941 Calumet Avenue, Chicago.

Q. 2. Have you or have you not ever been in the employ of the G. & C. Merriam Company, the complainant in this case? A. No. 2466

Q. 3. Have you ever had any contract relations with them? A. No.

Q. 4. Mr. A. L. Swift, a witness for defendant in this case has testified that you told him that you were working for the Merriam Company, this was some time in the year 1911. Is that statement true? A. It is not.

Q. 5. Who were you working for at that time? A. For myself. 2467

Q. 6. Did Mr. Swift know this to be the fact? A. I believe that he did.

Q. 7. What reasons have you for that belief? A. Why, he told me that I acted in a very foolish manner in going out and using my money to promote some one else's scheme; that he had worked along different lines, he had risked no money of his, if his proposition proved a failure why he lost nothing, if it was a success he got as much money as anybody. 2468

Q. 8. And that is the basis of your statement that he knew at that time that you were working for yourself and not for the Merriam Company? A. Absolutely.

Q. 9. Have you ever been in the employ of The Syndicate Publishing Company? A. Yes, sir.

Q. 10. During what time? A. In the months of February, March and April, 1911.

Q. 11. Was that at the beginning of their news-

2469

J. F. Murphy—Direct.

paper exploitation of their so-called "Webster's New Standard Dictionary"? A. It was just after the start of it.

Q. 12. Where did that campaign start, if you know? A. In Pittsburg, on the Pittsburg Post.

Q. 13. What if anything did you have to do with that campaign and the Pittsburg Post advertisements? A. Previous to my going into the employ
2470 of The Syndicate Publishing Company, I was connected with the Philadelphia North American, handling a deal that Mr. Adair, General Manager of The Syndicate Publishing Company had entered into previous to his connection with The Syndicate Publishing Company; when Mr. Adair and Mr. Swift entered into the partnership, or bought stock in The Syndicate Publishing Company they removed their headquarters from Philadelphia and went to New York. In the month
2471 of January Mr. Swift came from New York with copies of advertisements taken from the Boston American.

Q. 14. Advertisements of what? A. Of a dictionary used on a coupon scheme which he had received through Mr. F. E. Wright. He brought those to Philadelphia, which Mr. Swift said he secured from Mr. Wright.

Q. 15. What dictionary was advertised in these advertisements from the Boston American? A.
2472 G. & C. Merriam's Condensed Dictionary.

Q. 16. What took place in Philadelphia when Mr. Swift brought these advertisements and saw you in Philadelphia? A. We went to work on that advertising in the office that I occupied there, and we worked along a scheme to bring about the same sort of a scheme to use on the New Illustrated.

Q. 17. You mean the Webster's New Illustrated Dictionary? A. Yes.

Q. 18. Proceed with your answer, please. A.

Mr. Swift asked my advice as to the success of such a proposition. I asked him how it went down in Boston. He said they had sold a tremendous amount of books, so he understood. We looked into the scheme as it stood, as it was published in the Boston American, and I told him that I thought it was a mighty good scheme for a publisher, but a mighty poor one for the newspapers; that in order to make it more attractive for the newspaper you had to arrange some proposition whereby they would get circulation instead of selling books, and I suggested a school children's campaign. In my work on the Chicago Tribune I had met with very great success on the school children's campaign that I ran at Galesburg, and I suggested to Mr. Swift that that idea be applied in conjunction with a regular coupon scheme, that I thought they could work together. 2474

Q 19. What use did you and Mr. Swift make of these advertisements from the Boston American? 2475

A. We used them as a basis of the advertising that we got up.

Q. 20. How did you physically handle them? A. Well, we wanted to make it appear to the newspaper that took on the proposition that it was a going proposition, that it was not a new, untried proposition, and we clipped from the Boston American certain printed matter to convey that idea to a newspaper man who is used to newspaper copy. But we bought out the idea that whereas the Boston American proposition was more of a direct sale, we thought to get the advertising in such shape as the people reading it hurriedly would think they were to get a gift of this book instead of buying it direct; that we were to make a present of it to them, and they were supposed to merely pay so much expense money, which we called an expense bonus. 2476

Q. 21. Was any portion of the matter clipped

2477

J. F. Murphy—Direct.

from the Boston American which had been published in connection with Webster's Condensed Dictionary, printed and published in the Pittsburg Post or other papers after having been handled as you have described in connection with The Syndicate Company's book? A. In the Pittsburg Post some of it was.

Q. 22. Was this the display advertising or the
2478 reading notices, or both? A. Both, partly.

Q. 23. Have you any copies of the advertisements in the Boston American? A. I have not.

Q. 24. Can you point out anything in any of the advertisements in the Pittsburg Post which in and of itself would indicate the copying from the Boston American, if so, please do so and describe it. A. In the issue of February 6, 1911, of the Pittsburg Post, in the reading notices there states: "Those who can not conveniently come
2479 to the office can obtain books by mail by sending the six coupons required together with the cash expense bonus and fifteen cents for postage." Now the fifteen cents for postage was the amount that was required on the G. & C. Merriam Condensed Dictionary. On The Syndicate Publishing Company's New Illustrated book which we used in Pittsburg, the amount was twenty cents, it was later changed to twenty-two on other newspapers, which goes to prove what I say, conclusively, that
2480 this copy was just simply clipped and pasted by Mr. Patterson when he was getting up his reading notices.

MR. CARROLL: I object to that latter part of the answer and ask that it be stricken from the record.

Q. 25. And you do know as a matter of fact, and of your own knowledge, that reading notices were clipped and used in the manner you have al-

J. F. Murphy—Direct.

2481

ready testified, that is, I mean aside from this mere indicia? A. I have never seen a physical copy of Mr. Patterson's news copy, of course.

Q. 26. I am referring now to what you and Mr. Swift did. A. Oh, yes; yes.

Q. 27. Did that same reference to fifteen cents postage occur in any other reading notices which came under your observation? A. It occurred on the previous date, February 5, 1911, in the Pittsburg Post. 2482

Q. 28. Have you ever known of The Syndicate Publishing Company's dictionary to be on sale in stores at any place? A. It was on sale in Horne's Department store in Pittsburg during the progress of the campaign there.

Q. 29. At what price was that book sold at that store at that time? A. Sixty-two cents.

Q. 30. Was it advertised at that price? A. Yes, sir.

2483

Q. 31. Did you see the book? A. Yes, sir.

Q. 32. Did you buy a copy of it? A. Yes, sir.

Q. 33. I show you an advertisement of The Joseph Horne Co. in the Pittsburg Post of March 7, 1911, on page 3, which is headed by the phrase in large type, "A Webster's Dictionary for 62 cents." Is that the advertisement to which you referred? A. Yes, sir.

Q. 34. And was that the advertisement which caused you to go to that store and purchase that book? A. Yes, sir. 2484

MR. HALE: The advertisement described is offered in evidence and will appear inserted in the volume marked in evidence as "Complainant's Exhibit Defendant's Advertisements."

The two advertising reading notices referred to by the witness and contained in the Pittsburg Post of February 5, 1911, and February 6, 1911, are also offered in evi-

2485

J. F. Murphy—Cross.

dence and will appear in "Complainant's Exhibit Defendant's Advertisements."

Q. 35. I show you an advertisement and ask you if you can identify that as an advertisement clipped from the Pittsburg Post of February 12, 1911, it being an advertisement of defendant's Webster's New Illustrated Dictionary? A. Yes, 2486 sir.

MR. HALE: The advertisement identified by the witness is offered in evidence and and will appear in the exhibit volume marked "Complainant's Exhibit Defendant's Advertisements."

Q. 36. Mr. A. L. Swift further testified, on cross-examination, that while on the train going from Chicago to Philadelphia he met you and you told 2487 him that you were traveling for the Merriam Company; is that statement true? A. It is not.

Q. 37. Were you at that time or have you at any time traveled for the Merriam Company? A. I have never traveled for the Merriam Company.

Q. 38. Mr. Swift said that this occurred about five weeks prior to the date of his examination in which he so testified, which examination was held on June 26, 1912, this would bring it some time in the month of May. Do you recall meeting Mr. 2488 Swift upon the train at about that time? A. I do.

Q. 39. Did any such conversation take place? A. No, sir.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 40. Do you know how the book of The Syndicate Publishing Company came to be on sale in Horne's Department Store in Pittsburg? A. Why I do not, except what information I gained from

J. F. Murphy—Cross.

2489

Mr. Adair that the book was purchased from some jobber down in New York.

x Q. 41. Did you buy more than one copy of the book? A. Bought several copies.

x Q. 42. Did you, on behalf of The Syndicate Publishing Company, purchase all the copies which they had and offered for sale at that price in that store? A. We endeavored to buy everything they had on the counters.

2490

x Q. 43. What was the purpose of that? A. Simply to keep them from competing with the Pittsburg Post's proposition.

x Q. 44. It was for the purpose, was it not, of making truthful the statement that the book was not on sale in department stores?

MR. HALE: Objected to as calling for a conclusion of the witness.

A. Why Mr. Nevin, of the Pittsburg Post, was extremely put out because of the fact that the Horne people advertised the book at such a low price, and told me, he said that it looked to the general public as though the Pittsburg Post was trying to gouge them, and he talked like he wanted to stop the deal, and it was just simply to get those books out of the way and prevent any competition from that source that—

2491

x Q. 45. That—? The sentence is not finished. A. That is the reason we bought them up.

2492

x Q. 46. When did you go with The Syndicate Publishing Company? A. Some time in February; the early part of February, 1911.

x Q. 47. Can you fix the date in any way? A. No, I can't now.

x Q. 48. Have you any means of refreshing your recollection at all? A. I closed up the deal on the Philadelphia North American I think on the 8th of February, and went down to New York, and

2403

J. F. Murphy—Cross.

that was a Saturday, and the following Monday I went to Pittsburg entering into the employ of The Syndicate Publishing Company at that time.

x Q. 49. You think you went to Pittsburg then about the 10th or 12th of February? A. I think so.

2494

x Q. 50. And it was when you went to Pittsburg that you for the first time were in the employ of The Syndicate Publishing Company? A. Yes, sir.

x Q. 51. That is the first work you did for The Syndicate Publishing Company, was to go to Pittsburg. A. Well, some years ago in connection with a newspaper, with the Philadelphia Press I had some connection with The Syndicate Publishing Company.

x Q. 52. But on this work, immediately after you went with The Syndicate, you went to Pittsburg? A. Yes.

2495

x Q. 53. When did Mr. Swift show you the advertisements cut from the Boston American which you have spoken about? A. That was some time in January, I couldn't tell you the exact date.

x Q. 54. Where was that? A. In Philadelphia.

x Q. 55. You were not at that time employed by The Syndicate Publishing Company? A. I was not, no.

2496

x Q. 56. How did he happen to show them to you? A. He brought them over and told me that Frank Wright had got onto a live one up in Boston, they were selling a tremendous amount of dictionaries up there and wanted to frame up a proposition and start it and asked my advice about it.

x Q. 57. Did you have anything to do with the Boston game? A. Nothing at all.

x Q. 58. Do you know whether or not it was a success in Boston? A. I take it for granted from

the Boston American advertisements which I saw that Mr. Swift brought to Philadelphia.

x Q. 59. Did you ever see the so-called "Uncle Sam" cut in the Boston American advertisements? A. I can't recall that I ever did.

x Q. 60. You spoke of having worked with Mr. Swift cutting up advertisements and preparing them; where was that? A. In Philadelphia.

x Q. 61. At what time? A. In the middle of January,—the early part of January; some time in January, I think it was the early part, toward the middle of it. 2498

x Q. 62. Was Swift working for the Syndicate at that time? A. He was connected with the Syndicate at that time.

x Q. 63. Had the Pittsburg Post campaign started? A. No, it had not.

x Q. 64. Had he made any arrangement with the Pittsburg Post at that time? A. I don't believe that he did. 2499

x Q. 65. Did you actually have anything to do with preparing any of the advertisements which were used in the Pittsburg Post on the coupon plan? A. In the matter of advice and suggestion I did.

x Q. 66. Did you actually, physically, prepare any? A. I did.

x Q. 67. When was that? A. After I had been in Pittsburg.

x Q. 68. You prepared some advertisements that were used in connection with the coupon scheme? A. Yes, sir. 2500

x Q. 69. Were they successful?

MR. HALE: Objected to as calling for a mere guess or conclusion of the witness, and because the success of a campaign depends upon all advertisements and can not be traced to any one.

MR. CARROLL: The question is directed

2501

J. F. Murphy—Cross.

simply to the success of the advertisements which Mr. Murphy says he prepared.

MR. HALE: How can that be tested?

MR. CARROLL: Mr. Murphy will know.

A. I couldn't. I don't know just how I could answer that question.

2502 x Q. 70. Was any advertisement prepared by you in connection with the coupon scheme used more than once? A. I don't think it was.

x Q. 71. You wouldn't say that your writing of advertisements in connection with a coupon scheme wasn't successful, would you? A. Well, that would be a hard matter to say, whether they were successful or not.

2503 x Q. 72. About how many different advertisements did they have, display advertisements, in the Pittsburgh Post? A. Right at the start they had very few and there was constant repetition.

X Q. 73. What do you mean by "at the start"? A. The start of the campaign.

x Q. 74. When was that? A. The campaign started on February 5, if my recollection is correct.

x Q. 75. Approximately how many did they have? A. I don't know. I couldn't say that.

x Q. 76. Six or eight? A. Well, I don't think they had; they probably had about a half a dozen.

2504 x Q. 77. You kept using the same ones over and over again? A. Yes.

x Q. 78. Who wrote the reading notice in Pittsburgh? A. Mr. Patterson.

x Q. 79. Did he have the same ones over and over again? A. No, his differed every day.

x Q. 80. Did he use the Boston advertisements to any extent? A. For the basis of his first write-ups and at the start he did.

x Q. 81. He didn't for very long, though, did he? A. No, he didn't, not very long, but to get

the idea, you know, why he had the Boston American reading notices.

x Q. 82. That was only for two or three days, wasn't it? A. Well, I couldn't say as to that, of course I didn't—

x Q. 83. Were you there at that time? A. I was there about a week, I judge, after the campaign opened.

x Q. 84. During the time that you were there do you recall any instances where Mr. Patterson used any of the Boston reading notices? A. Only those two that I have already referred to, as regards fifteen cents postage. 2506

x Q. 85. The dates of those were February 5th and February 6th, yet you said you did not go to Pittsburg until about the 12th. A. Yes, sir.

x Q. 86. Do you wish to correct your previous statement then that these reading notices were used while you were in Pittsburg? A. I don't think that I made that statement. 2507

Question 80 and answer of witness read.

A. Well then, that will have to be corrected.

x Q. 87. Then during the time that you were in Pittsburg, Mr. Patterson did not, so far as you know, use the Boston reading notices at all? A. No.

x Q. 88. Was the so called school children's canvass, which you say you suggested to Mr. Swift, a success? A. No, sir. 2508

x Q. 89. Did you do anything else except work on that school children's canvass while you were in Pittsburg? A. Yes, I made displays of books and generally handled the campaign there.

x Q. 90. You mean to say you had charge of the campaign in Pittsburg? A. Well, every matter that come up between Mr. Nevin and Mr. Swift that had to be straightened out was taken up with me. Mr. Wright wrote me and asked me to look

after some collections there when the Post had failed to remit, the account was running into some thousands of dollars.

2510 x Q. 91. Except for the one advertisement which you have spoken of as having been written by you, which you say was used only once, did you write any other advertisement used in connection with the coupon scheme in Pittsburg? A. I wrote considerable advertising for the school children's campaign.

x Q. 92. That had no connection with the coupon scheme, however, had it? A. No direct connection, no.

x Q. 93. Did those advertisements appear in the Pittsburg Sun and not in the Post? A. Yes, sir.

2511 x Q. 94. So that, as a matter of fact, you only wrote one advertisement which appeared in the Pittsburg Post, and that appeared only once? A. I can't recall now.

x Q. 95. Did you meet Mr. Swift in Detroit? A. Yes, sir.

x Q. 96. In the spring of 1911? A. Yes, sir.

x Q. 97. Where was that? A. At the Cadillac Hotel.

x Q. 98. What did you tell Mr. Swift you were doing? A. Told him that I was handling the Reilly & Britton book on a coupon proposition of my own.

2512 x Q. 99. Are you sure that you didn't mention the name of the Merriams? A. Absolutely.

x Q. 100. You are sure you didn't say you were handling the Merriam book? A. Why, I might have said the G. & C. Merriam dictionary condensed, might have described it in that way.

x Q. 101. Then it is possible that you did mention the Merriams? A. Oh, yes.

x Q. 102. Did you personally conduct the campaign in connection with the Merriam's "Condensed" dictionary in St. Louis? A. Yes, sir.

MR. HALE: That question is objected to as incompetent, irrelevant and immaterial and not proper cross-examination, that matter not having been touched upon in the direct examination.

x Q. 103. Why did you, in so many of those advertisements in St. Louis, feature the name of the G. & C. Merriam Company? A. Why, to add to the value of the advertisement; to use the prestige of the G. & C. Merriam Company to help the sale. 2514

x Q. 104. To your knowledge was the Merriam "Condensed" dictionary ever sold in Pittsburg in connection with a newspaper scheme? A. Not to my knowledge.

x Q. 105. Did you see Mr. Swift in St. Louis when you were there? A. I did not.

x Q. 106. How long were you there in St. Louis? A. Oh, I was off and on in the town; would go in and stay two or three days then go out and go to some other city; I wasn't there regularly. 2515

x Q. 107. How much notice did you give The Syndicate Publishing Company when you left their employ? A. Why, I went down and told Mr. Adair, he was General Manager of The Syndicate Publishing Company, that I was dissatisfied, that things had not come as I expected they would when I left the Chicago Tribune to go out with him, and that I was going to do what I intended to do then, go in business for myself, as I thought I was going in business with him when I left the Tribune. 2516

x Q. 108. When was that? A. In October of 1910. You mean when I left the Chicago Tribune?

x Q. 109. No, I mean The Syndicate Publishing Company. I said how much notice did you give The Syndicate Publishing Company when you left their employ? A. I don't think I gave them very

2517

J. F. Murphy—Cross.

much notice. I think I went in the forenoon and told them I was going to Chicago that afternoon.

x Q. 110. When was that? A. I don't recall the exact date; the latter part of April.

x Q. 111. Was it within a day or two after you returned from Pittsburg? A. Oh, no, it was a week or ten days.

2518 x Q. 112. When did you begin handling the Merriam book? A. May the 8th I believe I started to handle it; I think that was the date.

x Q. 113. I show you a letter signed J. F. Murphy, dated February 27, 1911, and ask you if that is your hand writing? A. Yes, sir.

x Q. 114. Does that refresh your recollection as to the date when you arrived in Pittsburg? A. Yes, sir, that is the date.

2519 x Q. 115. You are now able to testify that you arrived in Pittsburg on February 27, 1911? A. Yes, sir.

x Q. 116. You were not there before that date? A. Yes, sir; yes, sir, that is right.

x Q. 117. That is right, you were not there before that date? A. Yes, sir, that is correct.

x Q. 118. I show you another letter dated May 2, 1911, signed J. F. Murphy, and ask if that is your handwriting? A. Yes, sir.

2520 x Q. 119. Was it by means of that letter that you resigned from The Syndicate Publishing Company? A. No, I went in and told Mr. Adair that I was going into business for myself.

x Q. 120. Was it that day? A. Just about that time, I went out of town that night.

x Q. 121. So that you are now able to state that the day you left the employ of The Syndicate Publishing Company was May 2, 1911? A. Yes, sir.

x Q. 122. When you met Mr. Swift on the train in the spring of 1912, what did you tell him with reference to your occupation? A. Why, I don't know as I made any particular reference to what

Notary's Certificate.

2521

I was doing, as a matter of fact, at that time, I had ceased handling the Reilly & Britton book, hadn't done any business for some little time on it, and I was handling a vacuum cleaner, and I didn't want to tell Mr. Swift what I was doing.

x Q. 123. Are you handling the Reilly & Britton book now?

MR. HALE: Objected to as irrelevant and immaterial.

2522

A. I think our relations are very cordial; I think I could handle it if I wanted to, but I am not at the present time handling it.

MR. CARROLL: That is all.

MR. HALE: I think that is all, Mr. Murphy.

DEPOSITIONS CLOSED.

2523

UNITED STATES OF AMERICA,	} ss.:
Northern District of Illinois,	
Eastern Division.	
State of Illinois,	
County of Cook,	

I, Kate S. Holmes, a Notary Public in and for the County of Cook in the State of Illinois, do hereby certify that the foregoing depositions of Sumner C. Britton, Clarence W. Taber and J. F. Murphy, were taken on behalf of the complainant in two certain causes now pending and undetermined in the District Court of the United States for the Southern District of New York, wherein G. & C. Merriam Company is complainant and CUPPLES & LEON Co., in one suit is defendant, and wherein G. & C. Merriam Company is complain-

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2525

Notary's Certificate.

ant and THE SYNDICATE PUBLISHING COMPANY in the other suit is defendant, before me by consent and pursuant to the stipulation entered of record, at the office of Rielly & Britton Company, 1006 South Michigan Avenue, Chicago, Illinois, on the 12th day of July, 1912, beginning at 11:30 o'clock A. M.; that Mr. William B. Hale was present as counsel for complainant, and Mr. Lauren
 2526 Carroll as counsel for defendants during the taking of said depositions; that the said witnesses were duly sworn by me before the commencement of their depositions; that the signatures of said witnesses were waived by agreement of counsel; that I am not connected by blood or marriage with either of the parties to these suits, nor interested, directly or indirectly, in the matter in controversy.

IN WITNESS WHEREOF I have hereunto set my
 2527 hand and seal this 19th day of July, A. D. 1912.

KATE S. HOLMES,

Notary Public.

My Commission expires in March, 1914.

Fee for taking depositions \$30.

Paid by complainant.

KATE S. HOLMES,
 Notary Public.

2528

DISTRICT COURT OF THE UNITED STATES 2529

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

VS

CUPPLES & LEON COMPANY,
Defendant.

2530

G. & C. MERRIAM COMPANY,
Complainant,

VS

SYNDICATE PUBLISHING COMPANY,
Defendant.

2531

Depositions in rebuttal on behalf of Complainant, taken before Charles K. Darling, Esq., as Special Examiner duly appointed in the above entitled causes, at the office of the Special Examiner in the Post Office Building, in the city of Boston, and State of Massachusetts, on the 18th day of July, 1912, at 2 o'clock P. M., pursuant to notice.

APPEARANCES:

2532

WILLIAM B. HALE, Esq., Counsel for the
Complainant;

LAUREN CARROLL, Esq., Counsel for both
Defendants.

2533

Michael J. Conroy—Direct.

STIPULATION.

It is hereby stipulated that the testimony of all witnesses produced at this examination before Special Examiner Darling may be taken stenographically by a competent stenographer appointed by the Special Examiner and subsequently transcribed and reduced to typewriting.

2534 It is further stipulated that the signatures of all witnesses so examined shall be and hereby are waived.

MICHAEL J. CONROY, a witness for Complainant, having been first duly cautioned and sworn, testified as follows:

By Mr. Hale:

2535 Q. 1. Mr. Conroy, will you please state your full name? A. Michael J. Conroy.

Q. 2. Residence and occupation? A. 293 Broadway, South Boston; reference library in Public Library, Boston.

Q. 3. Will you please produce here a file of the Boston American for the month of September, 1910? A. Yes, sir.

Q. 4. Is this bound volume a file of these papers? A. Yes, sir.

2536 Q. 5. From what source did you produce this volume? A. From our file in the Library. We bind all the Boston papers, morning and evening editions.

Q. 6. This volume then is the property of the Boston Public Library? A. Yes, sir.

MR. HALE: I think that is all.

[NO CROSS-EXAMINATION.]

K. N. Washburn—Direct.

2537

K. N. WASHBURN, a witness recalled on behalf of Complainant in rebuttal, having been first duly cautioned and sworn, testified as follows:

By Mr. Hale:

Q. 1. Mr. Washburn, I believe you are the secretary and one of the managers of the G. & C. Merriam Company, the Complainant in this case?

A. I am.

Q. 2. Is the Complainant the owner of the copyright of a book known as Webster's Condensed Dictionary? A. It is.

2538

Q. 3. Are you acquainted with the concern of Reilly & Britton of Chicago? A. I am.

Q. 4. Do you sell copies of Webster's Condensed Dictionary to that firm of Reilly & Britton?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, and as leading.

A. We do.

2539

Q. 5. Will you please state the arrangements between your firm and Reilly & Britton in regard to the Webster's Condensed Dictionary? A. We sell them the books that they use and they pay us for them.

Q. 6. Is that an oral or a written arrangement? A. Oral.

Q. 7. When was it first entered into? A. I am not certain of the date, but I think it was in 1906.

Q. 8. And it has continued ever since? A. It has.

2540

Q. 9. State whether or not the Merriam Company sells that book to any other person than Reilly & Britton; in other words, have they any exclusive rights in that book? If so, state what they are. A. They have the exclusive right of the sale in the United States and Canada.

Q. 10. What, if anything, has the Merriam Com-

2541

K. N. Washburn—Direct.

pany to do with the sales of that book? A. Nothing.

Q. 11. Has the Merriam Company ever exploited and sold that book, Webster's Condensed Dictionary, through the newspapers upon a coupon plan? A. It has not.

Q. 12. Has it ever had anything to do with the distribution of that book upon that plan?

2542

MR. CARROLL: Objected to as calling for a conclusion of this witness.

A. It has not.

Q. 13. Has a gentleman by the name of J. F. Murphy ever been in the employ of the Merriam Company? A. No.

Q. 14. Have you ever had a contract with J. F. Murphy for the sale of any of the books of the complainant company? A. We never have.

2543

Q. 15. To your knowledge has J. F. Murphy ever been in the office of the Merriam Company? A. He has not.

Q. 16. I presume you are familiar with the newspaper campaign by which the defendant, Syndicate Publishing Company, has distributed their book under the name of "Webster's New Standard Dictionary," sometimes called "Webster's New Illustrated Dictionary," through the newspapers under a coupon plan, are you not? A. Yes.

2544

Q. 17. Was it ever called to your attention or to the attention of any other member of your firm, to your knowledge, that any of the advertisements used by the Syndicate Publishing Company had been copied or imitated in connection with the newspaper distribution of Webster's Condensed Dictionary? If so, state when and all the facts in relation thereto. A. What knowledge I have on that subject came after the commencement of this suit.

Q. 18. Can you fix the date and state what that knowledge was more particularly? A. I can't fix any exact date. I should say it was sometime in the winter of 1911 and '12.

Q. 19. What did you hear in that connection and what were the circumstances? A. That it was during a visit to Springfield of Mr. Britton of Rielly & Britton, and he called my attention to that fact at that time.

2546

Q. 20. To what fact? A. To the fact that apparently the Syndicate Publishing Company was imitating advertisements which had first been started by them.

Q. 21. By them do you mean Reilly & Britton? A. Reilly & Britton Company.

MR. CARROLL: Objected to as not responsive.

Q. 22. I think you misunderstood the original question which related to the copying of advertisements first issued by the Syndicate Publishing Company, and which were claimed by them to have been copied by your firm in connection with the Condensed Dictionary. What is the fact as to that? Did you ever hear of any such claim? A. Not until quite recently.

2547

Q. 23. What and when first did you hear of any such claim? A. Why, I think when reading over the testimony of some of the witnesses for the defence.

2548

Q. 24. That would be within the last few weeks? A. Yes.

Q. 25. Mr. A. L. Swift, an officer of the Syndicate Publishing Company, has testified that upon the occasion of a visit by him to your company in October, 1911, he complained to your company and to you personally that your company had copied the advertisements of his company. Do

2549

K. N. Washburn—Direct.

you recall that conversation? A. I have no recollection of that.

Q. 26. At any time did you have any information or knowledge or even suspicion that any of the advertisements of the Syndicate Publishing Company had been copied or were claimed to have been copied and applied to the Webster's Condensed Dictionary by any person? A. Not that I recall.

2550

Q. 27. I show you file of the Boston American, a newspaper published in Boston, produced here from the Boston Public Library and identified by the last witness, and ask you if you have examined the same and observed the advertisements and the plan of distribution of the Webster's Condensed Dictionary as appears in these newspapers? A. I have.

2551

Q. 28. Did you observe that the plan of distribution was carried on by means of large display advertisements appearing from day to day covering a considerable period? A. I did.

Q. 29. And that the book was offered for certain specified prices in connection with coupons to be clipped from the paper? A. Yes.

Q. 30. And did you observe also that as part of the scheme of publicity the paper contained what may be termed reading notices referring to the dictionary distribution? A. I did.

2552

Q. 31. Have you also examined specimens of the Syndicate Publishing Company's newspaper advertising which are contained in the volume marked "Complainant's Exhibit, Defendant's advertisements," and in the other volume marked "Complainant's Exhibit, additional advertisements of Defendant"? A. I have.

Q. 32. What can you say in a general way as to whether or not the two books are distributed upon the same general plan of advertisements?

MR. CARROLL: Objected to as incompe-

K. N. Washburn—Direct.

2553

tent, irrelevant and immaterial, and as calling for a conclusion of this witness which he is not competent to make.

A. They are.

Q. 33. Have you particularly observed the coupons published in connection with Webster's Condensed Dictionary in the Boston American for September, 1910, with the coupons as published by the Syndicate Publishing Company and as contained in the exhibits mentioned? A. I have. 2554

Q. 34. I show you a specimen of the Syndicate Publishing Company's coupon as contained on page 7 of Complainant's Exhibit, Defendant's advertisements, and ask you to compare it with the dictionary coupon contained on page 2 of the Boston American of September 1st, 1910, published in connection with Webster's Condensed Dictionary, being then distributed by the Boston American, and ask you to point out any identities or similarities which exist in type, language or shading or other features? 2555

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, on the ground that the advertisements referred to speak for themselves, and on the further ground that the advertisement in the Boston American has not been offered in evidence.

MR. HALE: Complainant's counsel is but following the same plan of examination followed by the objecting counsel in his examination along this same line of the witness A. L. Swift. 2556

A. The coupons have the same darkened and shaded background, and they have quite a similar wording, both being called the "Dictionary Coupon," with a space for the date in an unshaded space, followed by the identical wording

2557

K. N. Washburn—Direct.

except as to the number of coupons to be used to procure a dictionary.

MR. HALE: Complainant offers in evidence the language of the coupon as contained in the Boston American, and as it is impossible to offer the sheet itself in evidence, the book belonging to the files of the Boston Public Library, the language is read upon the record and is as follows:

2558

“BOSTON AMERICAN
DICTIONARY
COUPON

Thursday, Sept. 1st, 1910.

Seven Coupons of Consecutive
Dates Constitute a Set.

2559 Dictionary Department, 272 Devonshire St.,
Boston.”

Q. 35. The language in the Syndicate Publishing Company's coupon to which you referred as being substantially similar and in part identical, was the following, was it not:

“Webster's

New Illustrated

2560

DICTIONARY COUPON,

Monday, March 27.

Six Coupons of Consecutive Dates
Constitute a Set.”

Is that correct?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial. The advertisement speaks for itself.

K. N. Washburn—Direct.

2561

A. It is.

Q. 36. Have you examined the coupons which appeared from day to day during the month of September in the Boston American, and do you find them all in the form which you have just testified?

MR. CARROLL: Objected to on the same grounds.

2562

A. I do.

MR. HALE: Complainant is doing the only thing practicable under the circumstances, and the example was set by Defendant's counsel in a case where it would have been easily practicable to have allowed the exhibits to speak for themselves.

Q. 37. Please look at the advertisement of Webster's Condensed Dictionary which appears in the Boston American of Monday, September 12, 1910, at page 5, the same being a full page advertisement occupying the entire page 5. I ask you to compare that advertisement with the advertisements contained in Complainant's Exhibit, Defendant's advertisements, at page 63, being the issue of the Peoria Star of November 4, 1911, and also at the advertisement which appears on page 101 of Complainant's Exhibit, Defendant's advertisements, being the advertisement which appeared in the Los Angeles Times, and also the advertisement which appears in the same exhibit on page 107, being the advertisement which appeared in the Mobile Item of December 19, 1911, and also the advertisement which appeared in the Pittsburg Post of February 12, 1911, which was offered in evidence at Chicago on July 12th, 1912, these last named advertisements being advertisements of the Syndicate Publishing Company's book, Web-

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2565

K. N. Washburn—Direct.

ster's New Illustrated Dictionary, and of the same book under the name of Webster's New Standard Dictionary, which was being advertised in those papers on those dates, and ask you to point out such similarities and identities as exist between these advertisements of the Syndicate Publishing Company and the advertisement of the Webster's Condensed Dictionary in the Boston American of September 12, 1910? A. The principal similarity is in the cut that is used, a caricature, I suppose, of Uncle Sam. The cut occupies nearly the whole of the left hand side of the page, with a cut of the dictionary in the center near the cut of Uncle Sam.

2566

Q. 38. And the dictionary is in the hands of Uncle Sam and is pointed to by him, is that correct? A. Yes.

2567

Q. 39. I read to you the following language from the advertisement of Webster's Condensed Dictionary in the Boston American for September 12, 1910, and which for brevity we will refer to as the "Uncle Sam ad."

"Here is Your Protection At home or abroad."

Do you find that language in large display type at the top of the page? A. I do.

2568

Q. 40. What language in large display type of the same character of letter and of the same size do you find at the top of the page of the Uncle Sam ad. in the Pittsburg Post of February 12, 1911?

Protection At home or abroad."

Q. 41. I find the following language in the Uncle Sam ad. of Webster's Condensed Dictionary in the Boston American of September 12th:

"The result of good fortune is the knowl-

edge of good English. At home or abroad one should have this knowledge. Go where you will, into the depth of ignorance or the height of education and you will find yourself in need at all times of that one great fortune, and that is—a handy reference guide of the correct English language. Confusion of mind to quick answer is the cause of a great deal of embarrassment amongst all classes of people.

2570

There is only one enlightenment to the correct and true path of knowledge, and that is through the WEBSTER'S CONDENSED DICTIONARY—a book that no family, student or business man can afford to be without. The BOSTON AMERICAN offers to help you along this path if you will but read what follows."

Will you please read what if any similar language you find in the advertisement of the Syndicate Publishing Company's book which appears in the Pittsburg Post of February 12, 1911?

2571

A. "The result of good fortune is the knowledge of good English. AT HOME OR ABROAD one should have this protection and knowledge. Go where you will, into the depth of ignorance or the height of education and you will find yourself in need at all times of that one great fortune and that is a handy reference guide of the correct English language. Confusion of mind to quick answer is the cause of a great deal of embarrassment amongst all classes of people.

2572

There is only one enlightenment to the correct and true path of knowledge and that is through the WEBSTER'S NEW ILLUSTRATED DICTIONARY—a book that no family, student or business man can afford

2573

K. N. Washburn—Direct.

to be without. The Pittsburg Post offers to help you along this path if you will but read what follows."

2574

Q. 42. Did you observe any differences between those two paragraphs, the one from the Boston American and the other from Pittsburg Post, except that the Pittsburg Post substitutes the title, "Webster's New Illustrated Dictionary," for the title, "Webster's Condensed Dictionary," and its own name, "Pittsburg Post," in the place of "Boston American"? A. There is no difference with those exceptions, and also the one word "Protection" in the sentence beginning: "At home or abroad one should have this protection and knowledge."

Q. 43. Otherwise the two paragraphs are identical? A. They are.

2575

Q. 44. I find in the Boston American Uncle Sam ad. the following language enclosed in a box:

"All you need to do is to cut seven dictionary coupons of consecutive dates from the daily and Sunday Boston American and present them with the price of any one of the three books you desire."

2576

Will you please read into the record any identical or similar language which you find placed in a box in the Uncle Sam ad. which appears in the Pittsburg Post? A. The language in the Pittsburg Post is as follows:

"All you need to do is to cut out six dictionary coupons of consecutive dates from the daily or Sunday Pittsburg Post and present them with the expense bonus amount set opposite any style selected (which covers the items of cost and packing, express from factory, checking, clerk hire, and other necessary expense items)."

K. N. Washburn—Direct.

2577

Q. 45. I also find the following language in the Uncle Sam ad. of the Boston American of September 12, 1910:

“Start to-day and cut out the coupons. You will find them in both the Sunday and daily American.”

Please read into the record any identical or similar language which you find in the Uncle Sam ad. of the Pittsburg Post. A. The similar language in the Pittsburg Post reads as follows: 2578

“Start to-day and cut out the coupons. You will find them in both the Sunday and daily Pittsburg Post.”

Q. 46. In the Boston American Uncle Sam ad. of September 12, 1910, I find enclosed in a box a description of three different styles of the book advertised with three different prices specified in large type at the right of each description. What do you find in the Pittsburg Post, Uncle Sam ad.? A. A similar box giving also three styles of binding of the Webster's New Illustrated Dictionary, headed in the Pittsburg Post, “Take your own choice of the books.” 2579

Q. 47. Do you find anything equivalent, similar or identical to the phrase in the Pittsburg Post ad., “Take your own choice of the books,” in the Uncle Sam ad. of the Boston American of September 12? A. No. 2580

Q. 48. Please look at a number of other advertisements in the Boston American for September, 1910, of different dates and see if you find any such phrase running through the advertisements. If so, point out the advertisement and the date and quote the language. A. In the advertisement of September 2, 1910, page 6, of the Boston American, I find:

2581

K. N. Washburn—Direct.

“Here is the description of the three books. Take your choice.”

Q. 49. Is that in display type at the top of the box describing the three styles of binding and books? A. It is.

2582 Q. 50. Do you find the same language similarly displayed in other advertisements in the Boston American of the Webster's Condensed Dictionary?

MR. CARROLL: I object to all this line of examination as irrelevant and immaterial.

2583 MR. HALE: This evidence is offered in rebuttal of evidence offered by Defendant, purporting to show that the Complainant had copied these newspaper advertisements from advertisements of the defendant Syndicate Publishing Company's books, and is offered for the purpose of showing that the shoe is on the other foot, and that advertisements of the Syndicate Publishing Company were in fact copied from the prior advertisements of the Webster's Condensed Dictionary which appeared in the previous year in the Boston American, and which the witness, Murphy, testified were used by the Syndicate Publishing Company's officer and agent, A. L. Swift, in the composition of advertisements for the Syndicate Publishing Company's newspaper campaign in connection with Defendant's book.

2584

MR. CARROLL: The summary of the witness, Murphy's testimony is objected to as not in accordance with the facts, it having appeared from said witness' testimony that he was not in the employ of the Syndicate Publishing Company until at least three weeks after he had testified that the advertisements were prepared, so that he was

obviously not in a position to know how they were prepared or from what source.

A. Exactly similar language is used in a similar way in the Boston American advertisement of Saturday, September 3rd. The same language is in the Boston American of Tuesday, September 6th, 1910, and of various other dates.

Q. 51. In other words, it runs generally through the scheme and plan of the advertisements of the Boston American; is that correct? A. It is. 2586

Q. 52. And placed in association with the description of the three styles in a box? A. It is; the language referred to being the phrase:

“Here is the description of the three books. Take your choice.”

Q. 53. In the advertisements of the Syndicate Publishing Company's book which appear in Complainant's Exhibit, Defendant's advertisements, do you find the language: “Your choice of these three books,” in association with the description of the three styles in a box running through them or similar language, such as: “Take your own choice of these books,” similarly placed? 2587

MR. CARROLL: I object to this line of questioning on the ground that counsel's characterization of the language as similar is improper, and that it is his own conclusion, and that language must necessarily be somewhat similar to express a similar thought. 2588

MR. HALE: The advertisements referred to are in evidence and will speak for themselves. The testimony of the witness is intended merely to assist the court in comparing the various advertisements.

2589

K. N. Washburn—Direct.

MR. CARROLL: Attention of counsel for Complainant is called to the fact that the Boston American advertisements are not in evidence.

MR. HALE: The language contained in the Boston American has been read upon the record so far as relates to the subject of inquiry.

2590

A. I do.

Q. 54. Running through the advertisements of the Webster's Condensed Dictionary as contained in the Boston American for September, 1910, do you find in display type the following language? And I quote from the Uncle Sam ad. of September 12:

"Here is the general contents of Webster's Condensed Dictionary."

2591

A. Yes, I do.

Q. 55. Please look at the advertisements contained in the volume marked "Complainant's Exhibit, Defendant's advertisements," and see whether you find in display type the words: "General contents of Webster's New Standard Dictionary."

2592

MR. CARROLL: I object to this particular question as irrelevant and immaterial on the ground that there is no other way of stating the general contents except by the two words, "General contents," and that those are the only two words which are similar in the advertisements.

A. I do.

Q. 56. Do you find it in each instance followed by descriptive matter descriptive of the contents?

A. I do.

K. N. Washburn—Direct.

2593

Q. 57. Similarly used in the line of Defendant's advertisements and in the line of advertisements in the Boston American; is that correct?

MR. CARROLL: Objected to as calling for a conclusion of the witness, and I move that the answer be stricken out.

A. Yes.

Q. 58. Do you likewise find the language:

2594

"All you need to do is to cut out seven Dictionary coupons of consecutive dates from"

and then specifying the paper, running through the line of Advertisements of Webster's Condensed Dictionary in the Boston American, and the same language running through the advertisements in the Syndicate Company's dictionary which are contained in Complainant's Exhibit, Defendant's advertisements? A. I do; the number of coupons to be cut out varying, however.

2595

MR. HALE: Complainant's counsel now offers in evidence a copy of the Uncle Sam ad. clipped from the Boston American of September 12, 1910, in which counsel has marked with pencil the matter specially referred to by the witness as being similar or identical with matter in the advertisements marked, "Complainant's Exhibit, Defendant's advertisements," and the same is marked, "Complainant's Exhibit, specimen of the advertisements copied by Defendant," and will appear included in the volume marked "Complainant's Exhibit, Defendant's advertisements," immediately following the Pittsburg Post advertisement of February 12, 1911.

2596

MR. CARROLL: I object to statement of

2597

K. N. Washburn—Direct.

counsel for complainant made in offering this exhibit, on the ground that most of the reading matter contained in this exhibit just offered has been compared with only one of the advertisements of the Syndicate Publishing Company's book, namely, the advertisement which appeared in the Pittsburg Post of February 12, 1911, and which was offered in evidence in Chicago on July 12, 1912.

2598

Q. 59. Please compare the Boston American Uncle Sam ad. of September 12, 1910, with the Uncle Sam ad. of the Peoria Star of November 4, 1911, which appears on page 63 of the volume marked, "Complainant's Exhibit, Defendant's advertisements," and say whether you find the same matter reproduced as you did in the case of the Pittsburg Post, designating it. A. The cuts in both instances are almost identical, and I find the similar words in the Peoria Star: "Protection at home or abroad," "The result of good fortune is a knowledge of good English," and so forth, as previously quoted; also the words in a box:

2599

"All you need to do is to cut out six Dictionary coupons of consecutive dates from the Peoria Star and present them with the expense bonus amount set opposite any style," and so forth.

2600

I also find in the box the words in display type, "Take your own choice of these books," followed by a general description of the three styles of binding.

Q. 60. What do you find with reference to this same Uncle Sam ad. in the Los Angeles Times of December 3, 1911, which appears on page 101 of the volume marked "Complainant's Exhibit,

K. N. Washburn—Direct.

2601

Defendant's advertisements"? A. I find the same features last mentioned, and in the same language.

Q. 61. What do you find with reference to the Uncle Sam ad. in the Mobile Item of December 19, 1911, which appears on page 107 of the volume marked "Complainant's Exhibit, Defendant's advertisements"? A. The same general display and language.

2602

By Mr. Carroll:

Q. 62. Do you not find in each one of the advertisements referred to in large display type the word, "Presentation"? A. Yes.

Q. 63. This appears in the advertisements of the Syndicate Publishing Company's book and does not appear in the Boston American advertisements of the Condensed Webster, does it? A. Yes, it does appear in the advertisements of the Syndicate's book and not in the advertisement of the Condensed book.

2603

By Mr. Hale:

Q. 64. Please look at the advertisement of Webster's Condensed Dictionary appearing in the Boston American for September 20th, 1910, on page 6, and say whether or not you find the following language:

"Dictionaries will be sent by mail on receipt of full set of coupons and bonus—together with fifteen cents to pay cost of postage."

2604

A. I do.

By Mr. Carroll:

Q. 65. Do you find in this advertisement any reference to a "Presentation" by the Boston American? A. No.

2605

K. N. Washburn—Direct.

By Mr. Hale:

Q. 66. Do you find that same language in the advertisement on page 6, of the Boston American, September 21, 1910? A. I do.

Q. 67. Please look at the advertisement in the Boston American of September 24, 1910, on page 3, and say whether or not you find the following language:

2606

“These books can be had for a little trouble—cutting seven coupons on seven consecutive days from the American—daily and Sunday—and a small bonus to cover the actual cost of printing and binding.”

And also the following language:

“Dictionaries will be sent by mail on receipt of full set of coupons and bonus.”

2607 A. I do.

Q. 68. Do you find the same reference to a bonus in other advertisements? And I call your attention to that in the Boston American of September 28, 1910, offering the book for coupons and a bonus? A. I find this language in the advertisement in question:

“Dictionaries will be sent by mail on receipt of full set of coupons and bonus together with fifteen cents to pay postage.”

2608

Q. 69. Do you find that the picture or cut of the dictionary running through the Boston American ads. is substantially the same in size, color and place of display as the cut of the Syndicate Company's dictionaries in the advertisements which have been offered in evidence?

MR. CARROLL: Objected to as calling for a conclusion of the witness.

A. I do.

MR. HALE: You may cross-examine.

CROSS-EXAMINATION by Mr. Carroll:

x Q. 70. On your direct testimony you referred to an arrangement which you had with Reilly & Britton. What writings have you in your possession covering that arrangement? A. Private memorandum that I took at the time the arrangement was made, and that took place in our office in Springfield. 2610

x Q. 71. When was that? A. I am not able to fix the exact date. It was sometime I think, as I have already stated, in 1906.

x Q. 72. Have you that memorandum with you? A. I have not.

x Q. 73. Can you remember the contents of it? A. In a general way, yes.

x Q. 74. What were the contents? A. It included the arrangements for manufacturing with the manufacturer, and at the same time a general statement of the arrangement that we made with Reilly & Britton for handling the book. 2611

x Q. 75. Will you give a little more fully the arrangement with the manufacturer and the details of the arrangement with Reilly & Britton? A. Yes. Why, the books are manufactured in Chicago.

x Q. 76. By whom? A. By the George M. Hill Company. They are ordered from the manufacturer. 2612

x Q. 77. By whom? A. By Reilly & Britton, as desired. The manufacturer bills to us as the books are shipped at the price we arranged with the manufacturer to make them, and we then bill to Reilly & Britton at a higher price, at the price agreed upon, and collect from the Reilly & Britton Company.

2613

K. N. Washburn—Cross.

x Q. 78. Is that the whole arrangement? A. It is.

x Q. 79. Does Reilly & Britton give you fixed order or guaranty for a certain number of books? A. They do not.

x Q. 80. Do they take books from you simply to fill their orders? A. They do.

2614 x Q. 81. How did you market Webster's Condensed Dictionary before you made the arrangement with Reilly & Britton which you have just mentioned? A. It was published by the American Book Company and marketed by them.

x Q. 82. You mean that they manufactured it? A. They did.

x Q. 83. They had the custody of the plates? A. They did.

2615 x Q. 84. When you made this arrangement with Reilly & Britton, then you took the plates back from the American Book Company? A. The American Book Company surrendered the plates to us.

x Q. 85. You all the time kept title to the plates, did you? A. We did.

x Q. 86. And do still? A. We do.

x Q. 87. Do you remember the visit of Mr. A. L. Swift to the office of the G. & C. Merriam Company in Springfield in October, 1911? A. I don't remember the date. I remember he came there last fall.

2616 x Q. 88. Don't you remember that he discussed with you at that time the newspaper campaign which had been carried on in various cities in connection with Webster's Condensed Dictionary? A. I don't recall it at all.

x Q. 89. Don't you remember that at that time he told you that Murphy had formerly been in the employ of the Syndicate Publishing Company?

MR. HALE: The question is objected to on

the ground that Mr. Swift has not testified that he made any such statement in that conversation. The question assumes a fact that has not gone in evidence.

MR. CARROLL: I am simply trying to refresh the recollection of this witness.

A. He may have done so; I do not recall it.

x Q. 90. What knowledge did you have of the newspaper campaign which was being carried on in connection with the Merriam Condensed Webster in the newspapers? A. I had very little knowledge of it. 2618

x Q. 91. You knew that such a campaign was going on, I suppose? A. Yes.

x Q. 92. You from time to time saw the advertisements, I suppose? A. Not until after this controversy arose, unless I by chance saw advertisements that appeared in the Boston American, but I have no recollection of having seen any of those advertisements. 2619

x Q. 93. What relation did you have to the campaign carried on in the Boston American? A. We had no relation to it. The arrangement was made entirely by Reilly & Britton. We had nothing to do with it.

x Q. 94. Who prepared the advertisements which you have referred to in the Boston American? A. I have no knowledge.

x Q. 95. Are they copyrighted? A. I know nothing about it. 2620

x Q. 96. You make no claim, then, that the advertisements were prepared by the G. & C. Merriam Company and copyrighted by them? A. We have not thought of making such a claim.

x Q. 97. How did you get such an intimate knowledge of the advertisements of the Boston American? A. By looking at the advertisements recently.

2621

K. N. Washburn—Re-direct.

By Mr. Hale:

x Q. 98. Do you mind saying when you looked at them? A. Today.

x Q. 99. While you were on the stand? A. And before.

x Q. 100. Have you looked at most of the advertisements contained in the Boston American? A. I have looked at a great many of them.

2622

x Q. 101. Are the apparent similarities which you have pointed out, that is to say, the so-called Uncle Sam ad. advertisement and the phrases which appear in that, and the descriptive phrases, such as, "Take your choice," and "General contents of dictionary," and, "All you need to do is to cut six coupons," etc., which run through other advertisements, all of the apparent similarities which you discovered? A. I don't recall any others.

2623

MR. CARROLL: I think that is all.

RE-DIRECT EXAMINATION by Mr. Hale:

Re-D. Q. 102. The private memorandum which you made of your arrangement with Reilly & Britton Company was an unsigned memorandum made by yourself merely for your own recollection of the circumstances, is that correct? A. It was.

2624

Re-D. Q. 103. Mr. Carroll asked you whether Reilly & Britton ordered books simply to fill their orders, and you answered simply yes. Just what did you mean? A. I meant that when they needed books for any purpose, that they had them shipped to them from the bindery.

Re-D. Q. 104. And that is all that you meant by that answer? A. Yes.

Re-D. Q. 105. You have spoken about the Webster's Condensed Dictionary having been at one time published by the American Book Company. What was the nature of that arrangement? A.

They published the book under royalty contract with us.

Re-D. Q. 106. By which you virtually leased them the plates? A. Yes.

Re-D. Q. 107. And the Merriam name appeared in the publisher's imprint? A. It did.

Re-D. Q. 108. And the Merriam Company owned the books and the copyright? A. Yes.

Re-D. Q. 109. Mr. Carroll asked you whether the language quoted from advertisements of the Syndicate Publishing Company's book and from advertisements of the Webster's Condensed Dictionary in the Boston American were all the similarities which you noticed between the two lines of advertisements, and you answered you recalled no others. What did you notice in respect to the general similarities including cut of the book, the display, the plan of the advertisements, and the general description of the scheme? 2626

MR. CARROLL: I object to that question as calling for a conclusion of the witness and as being obviously incompetent, irrelevant and immaterial. 2627

A. There was a general similarity between the advertisements of the Syndicate Publishing Company and those appearing in the Boston American.

MR. HALE: That is all.

2628

RE-CROSS EXAMINATION by Mr. Carroll:

Re-x Q. 110. What do you mean by "general similarity"? A. The matter of display.

Re-x Q. 111. You mean they both used full page display advertisements, and that both sold the dictionary in connection with coupons cut from the paper? A. Yes.

Re-x Q. 112. Do you refer to any other simil-

2629

K. N. Washburn—Re-cross.

arity except those already mentioned? A. I think there was a general similarity in the matter of display.

Re-x Q. 113. Will you please point out such similarity? A. The similarities mentioned are all that I can point out.

2630

Re-x Q. 114. Will you please give a list of the books which you are now marketing under the name "Webster" to-day, and the usual retail price of those books? A. I don't think I can do that offhand.

MR. HALE: Unless the witness can accurately do so, I object to his attempting to guess, especially as this is not proper cross-examination and amounts to the introduction of new evidence in chief by Defendant.

2631

MR. CARROLL: It is simply supplementary evidence and is proper cross-examination.

2632

A. I can't remember offhand, but I produce a list of the books which we now sell, with the prices. The books under the heading, "Special Series," which appear upon the last page of the leaflet produced, are handled exclusively by Reilly & Britton and the leaflet indicates that fact by stating that the correspondence concerning those special series should be addressed to Reilly & Britton, selling agents, at Chicago, Illinois.

By Mr. Hale:

Re-x Q. 115. You don't mean by the production of this list to say that Reilly & Britton, sell the Webster's Condensed Dictionary as agent for G. & C. Merriam Company? A. No.

Re-x Q. 116. The true fact is as already stated by you in your testimony? A. It is.

Re-x Q. 117. Are Reilly & Britton your selling

K. N. Washburn—*Re-cross.*

2633

agents for any of your other publications? A. They are selling agents for the Webster's Unabridged Dictionary.

The list produced by the witness is as follows:

First Page. LIST OF PUBLICATIONS WITH PRICES. The Merriam Series. G. & C. Merriam Co. For Over 68 Years Publishers of the Genuine Webster's Dictionaries. Springfield, Mass., U. S. A.

2634

Second Page. WEBSTER'S NEW INTERNATIONAL DICTIONARY. The Merriam Webster. A New Creation. 400,000 Words and Phrases. 2,700 Pages. 6,000 Illustrations. Editor in Chief, W. T. Harris, Ph.D., L.L.D., for seventeen years United States Commissioner of Education.

Styles of Binding

Net Prices

Sheep, marble edge, indexed.....	\$12.00
Cloth, 2 volumes, indexed	12.00
Sheep, 2 volumes, marble edge, indexed..	14.00
Half Morocco, marble edge, indexed....	14.50
Half Russia, marble edge, indexed.....	14.50
Full Russia, marble edge, indexed.....	17.50
Full Morocco, vermillion edge, indexed..	18.00
Full Morocco, gilt edge, indexed.....	20.00

2635

No extra charge for complete reference index, which is included in the above prices.

2636

WEBSTER'S INTERNATIONAL DICTIONARY

(Old Edition).

Sheep, marble edge, indexed.....	\$10.75
----------------------------------	---------

THE INTERNATIONAL IS THE ONE GREAT
STANDARD AUTHORITY.

It is the Standard of the Federal and State

2637

K. N. Washburn—Re-cross.

Courts. The Standard of the Government Printing Office. The basis of nearly all the school-books in the country. Indorsed by every State School Superintendent. Universally recommended by Statesmen, College Presidents, Educators, and Authors. Adhered to as Standard by over 99% of the Newspapers.

THE ABOVE CANNOT BE SAID OF ANY OTHER BOOK.

2638

Third Page.

WEBSTER'S COLLEGIATE DICTIONARY

Octavo, 1136 Pages, 1400 Illustrations.

Recently issued. Size 7 x 10 x 2-5/8 inches. The largest of the several abridgements of the International. Contains a valuable pronouncing Glossary of Scottish Words and Phrases.

Cloth, with complete reference index \$3.00

2639 Sheep, marble edge, with complete reference index 4.00

Half Morocco, red edge, with complete reference index 5.00

A SPECIAL THIN PAPER EDITION DELUXE

of the Collegiate has also been issued. It is printed on bible paper, from the same plates as the regular edition. Very attractively bound—limp boards, round corners. Size 5 3/4 x 8 5/8 x 1 1/2 in.

2640 Art Canvas, dark blue, gilt stamps, marble edge, indexed \$3.50

Full Seal, rich dark brown, gilt stamps, full gilt edge, indexed 5.00

WESTER'S LITTLE GEM DICTIONARY.

The Most Complete of Pocket Manuals. 224 Pages carefully selected Vocabulary, also Ga-

zetteer of the World, many valuable tables and 16 pages of Colored Maps.

Dark Green Cloth, red edge, indexed..... 25¢

Full Leather, gold edge, indexed..... 50¢

WEBSTER'S NATIONAL PICTORIAL DICTIONARY

Octavo, 1,100 Pages, 600 Illustrations. Sheep, marble edge, without complete reference index, reduced to \$3.00. 2642

LAW BOOKS

Chitty on Pleadings, 2 vols., from English edition thoroughly revised and Americanized, with notes and references, by Hon. J. C. Perkins, L.L.D..... \$16.00

Chitty on Bills. Edited by Hon. J. C. Perkins, L.L.D..... 8.00 2643

Fourth Page.

SPECIAL SERIES.

WEBSTER'S UNABRIDGED DICTIONARY.

The best large English dictionary extant until the publication of the first INTERNATIONAL. 1795 Quarto Pages, 3,000 Illustrations.

Regular Edition, full sheep, indexed..... \$5.00 2644

Special Edition, full sheep, indexed..... 4.00

Special Edition, cloth, indexed..... 2.50

WEBSTER'S CONDENSED DICTIONARY.

46,297 Words. 1,500 Illustrations.

Extra cloth, marble edge, indexed $7\frac{3}{4} \times 5\frac{3}{4}$ x $1\frac{3}{4}$ in. \$1.25

Half Morocco, marble edge, indexed, $7\frac{3}{4} \times 5\frac{3}{4}$ x $1\frac{3}{4}$ in. 1.50

2645

K. N. Washburn—Re-cross.

WEBSTER'S PRACTICAL DICTIONARY.

31,465 Words. 1,200 Illustrations.

- Ideal Edition, extra cloth, marble edge, size
 $7\frac{1}{4} \times 5\frac{1}{4} \times 1\frac{1}{4}$ in..... 80¢
 Concise Edition, extra cloth, marble edge, size
 $7\frac{1}{4} \times 5\frac{1}{4} \times 1$ in. 65¢
 Popular Edition, durable cloth, marble edge,
 size $7\frac{1}{4} \times 5 \times 1$ in..... 40¢

2646

Correspondence concerning this special series
 should be addressed to REILLY & BRITTON,
 Selling Agents, 258 and 260 Wabash Ave., Chi-
 cago, Ill.

CAUTION: The Genuine Series of Webster's
 Dictionaries can be identified by a circular trade-
 mark on the front cover, or by our name on the
 title-page.

2647

BEWARE of cheap reprints of the Webster's
 Unabridged of 1847 and of un- New
 authorized and unreliable issues International
 of smaller dictionaries, also of Dictionary
 larger so-called Webster dictionaries not of the
 genuine Webster series.

GET THE LATEST and BEST.

2648

STIPULATION.

2649

It is hereby stipulated that at any time within thirty days from this date counsel for Complainant may indicate to counsel for Defendant any books which he considers identical or substantially identical in literary contents with any books which have been offered in evidence by counsel for Defendant. When the name of such books shall have been so given, said books shall be deemed in evidence as though offered at a regular hearing and may be used in argument at the final hearing, and all subsequent proceedings in the case, subject to all objections on the ground of relevency, competency and materiality, but no objection is to be made upon the ground that the same were not regularly produced and marked in evidence. 2650

It is also hereby stipulated that any dictionary containing the name "Webster" in its title, and bearing the imprint of Reilly & Britton or the American Book Company, which has been referred to in the testimony, may be deemed in evidence as one of Defendant's exhibits, subject to the above restrictions. 2651

[Complainant's case in rebuttal is now closed, and Complainant rests.]

2652

2653 **Notice Offering Dictionary Exhibits Pursuant to Stipulation.**

IN THE DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

2654 G. & C. MERRIAM COMPANY,
Complainant,

VS

CUPPLES & LEON CO.,
Defendant.

In Equity
No. 8—161.

2655 G. & C. MERRIAM COMPANY,
Complainant,

VS

THE SYNDICATE PUBLISHING COM-
PANY,
Defendant.

In Equity
No. 8—162.

Sirs:

2656 PLEASE TAKE NOTICE that pursuant to the stipulation of July 18th, 1912, entered upon the record, complainant claims that the hereinafter named dictionaries are identical, or substantially identical in literary contents, with certain dictionaries offered in evidence by the defendants, and as hereinafter more particularly specified, to wit:

1. The following four dictionary exhibits of defendants, to wit:

“Webster’s Library Dictionary,” published by M. A. Donohue & Co., copyright date, 1911;

Notice Offering Dictionary Exhibits Pursuant to Stipulation. 2657

"*Webster's Business & College Dictionary*," published by W. B. Conkey Co., copyright date 1911.

"*Webster's Modern Dictionary*," published by L. W. Walter Co., copyright dates, 1907 and 1908; and

"*Webster's American Standard Dictionary*," published by Commonwealth Publishing Co., copyright date, 1909, 2658

are substantially one and the same book and apparently printed from the same, or a duplicate set of plates, with only slight and immaterial, if any, variations in prefatory and supplementary matter. Each of these four dictionary exhibits of defendants is substantially identical with and apparently printed from the same plates as a dictionary produced herewith and hereby offered in evidence entitled, "*Donohue's Standard New Century Dictionary*" published by M. A. Donohue & Co., copyright date, 1905, in connection with which the name "*Webster*" does not appear. 2659

2. Defendants' Exhibit, "*Webster's Universal Self-Pronouncing Dictionary*" published by John C. Winston Co., copyright dates, 1911 and 1908, is substantially identical with and a reprint of "*The Crown Dictionary*," "*The Students' Imperial Dictionary*" and "*The British Empire Dictionary*," which last three books have been heretofore offered in evidence by complainant, and is likewise substantially identical with the books of the defendants which are involved in these cases. This Winston edition of this book contains a small per cent. of additional words and definitions in the vocabulary, but is mainly identical with the "*Crown Dictionary*" as above stated. 2660

2661 *Notice Offering Dictionary Exhibits Pursuant to Stipulation.*

3. Defendants' Exhibit, "*Webster's School & Office Dictionary*" published by Thompson & Thomas, copyright dates, 1901, 1903 and 1905, is substantially identical, and apparently printed from the same, or a duplicate set of plates as a book herewith produced and offered in evidence entitled "*The Complete Compendium of Universal Knowledge Containing All you Want to Know of Language, History, Government, Business and Social Forms, etc.*" by William Rawlston Baleh, published by Franklin Square Bible House, copyright date, 1891, Cover Title, "*The Complete Compendium*" in connection with which the name "*Webster*" nowhere appears.

4. Defendants' Exhibit, "*Hurst's Webster's Dictionary*" published by Hurst & Co., copyright dates, 1879 and 1882, is substantially the same identical dictionary as the following described dictionaries herewith produced and offered in evidence, the title pages of which are as follows:

- "The American Standard Dictionary containing all needed words that are to be found in the English language, with the exact definition, proper spelling and true pronunciation as given by the greatest Lexicographers, Webster, Worcester, Johnson, etc.," published by Hurst & Co., copyright notice 1881, by Hurst & Co.

- "The American Unabridged Dictionary containing all needed words that are to be found in the English language with the exact definition, proper spelling and true pronunciation as given by the greatest lexicographers," etc., copyright notice dated 1881 by Hurst & Co.

- "The American Popular Dictionary con-

Notice Offering Dictionary Exhibits Pursuant to Stipulation. 2665

taining every useful word in the English language with its correct spelling, accurate pronunciation and exact meaning according to Webster and other authorities," etc., published by Hurst & Co. dated 1882, copyright notices by Hurst & Co. dated 1879 and 1882.

"The Handy Reliable Dictionary of the English language, a comprehensive lexicon for the million based on the labors of Webster and other American and English authorities" published by Hurst & Co., copyright notice dated 1891 by Hurst & Co. 2666

"Hansell's Practical Illustrated Pronouncing Pocket Dictionary of the English language based on the labors and principles of Webster and other authorities," etc., published by F. F. Hansell & Bro., dated 1886, copyright notice by F. F. Hansell dated 1886. 2667

"The American Diamond Pronouncing Dictionary of the English language, the orthography, definition and pronunciation based on the principles of the best American and English Lexicographers," etc., published by Hurst & Co., copyright notice by Hurst & Co., dated 1878. 2668

All of the above dictionaries are apparently printed from the same or a duplicate set of plates and they are the same book, notwithstanding their various different names.

5. Defendants' Exhibit, "*Webster's Pronouncing Dictionary of the English Language*" by F. Tennyson Neely, dated 1895 and without any copyright notice, is the same identical dictionary as three other dictionaries herewith produced and now offered in evidence, and entitled respectively as follows:

2669 *Notice Offering Dictionary Exhibits Pursuant to Stipulation.*

"*Craig's Dictionary.*" "A pronouncing dictionary of the English language, based upon the works of Webster, Worcester, Walker, Johnson, Latham, Smart," etc., dated 1882, copyrighted by Charles H. Craig.

2670 "*The Excelsior Dictionary of the English Language.* Spelling, Pronunciations and Definitions According to the Authority of Webster and other American and English Lexicographers," etc., published by C. C. Parker, dated 1883, copyright notice by DeWolfe, Fiske & Co., dated 1883.

"*The Popular American Dictionary*" on the basis of Webster, Worcester, Johnson and the Most Eminent English and American Authorities," etc., published by Belford, Clark & Co., dated 1886.

2671 Defendants' said exhibit and the last three named books are apparently printed from the same plates or a duplicate set thereof.

The dictionaries above referred to and offered in evidence are marked respectively as follows:

"Complainant's Exhibit, Donohue's Standard New Century Dictionary."

"Complainant's Exhibit, Balch's Complete Compendium."

2672 "Complainant's Exhibit, Hurst's American Standard Dictionary."

"Complainant's Exhibit, Hurst's American Unabridged Dictionary."

"Complainant's Exhibit, Hurst's American Popular Dictionary."

"Complainant's Exhibit Hurst's Handy Reliable Dictionary."

"Complainant's Exhibit, Hurst's American Diamond Dictionary."

Notice Offering Dictionary Exhibits Pursuant to Stipulation. 2673

"Complainant's Exhibit, Hansell's Practical Dictionary."

"Complainant's Exhibit, Craig's Dictionary."

"Complainant's Exhibit, New Excelsior Dictionary."

"Complainant's Exhibit, Popular American Dictionary." 2674

Inspection of the said dictionaries is hereby tendered and may be had at all times in accordance with the stipulation between counsel in regard to exhibits heretofore entered of record.

Dated, New York City, August 2nd, 1912.

Yours, etc.,
JUDSON & HALE,
Solicitors for Complainant,
Office & Post Office Address, 2675
No. 40 Wall Street,
New York City,
Borough of Manhattan.

To

Messrs. GOULD & WILKIE,
Solicitors for defendant Cupples & Leon Co.,
Office & Post Office Address,
No. 2 Wall Street, New York City,
Borough of Manhattan.

Messrs. STRONG & CADWALADER, 2676
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"III. Accurate and discriminating definitions, with
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"To which are prefixed an introductory dissertation on
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By Noah Webster, LL.D.,

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2904

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General Subjects of this Work.

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- 2911 III. Pronunciation exhibited and made obvious by the division of words into syllables, by accentuation, by marking the sounds of the accented vowels, when necessary or by General Rules.
- IV. Accurate and discriminating definitions, illustrated, when doubtful or obscure, by examples of their use selected from Respectable Authors or by familiar Phrases of undisputed authority.

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BE IT REMEMBERED: That, on the Eighteenth day of April Anno Domini 1859, G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

An American Dictionary of the English Language; containing the Whole Vocabulary of the First Edition in two Volumes Quarto; The entire corrections and Improvements of the Second Edition in two volumes Royal Octavo; to which is Prefixed An Introductory Dissertation on the Origin, History, and Connection, of the Languages of Western Asia and Europe, With An Explanation of the Principles on which Languages are formed. 2914

By Noah Webster, LL. D., Member of the American Philosophical Society in Philadelphia; Fellow of the American Academy of Arts and Sciences in Massachusetts; Member of the Connecticut Academy of Arts & Sciences; Fellow of the Royal Society of Northern Antiquaries in Copenhagen; Member of the Connecticut Historical Society; Corresponding Member of the Historical Societies in Massachusetts, New York, and Georgia; of the Academy of Medicine in Philadelphia, and of the Columbian Institute in Washington; and Honorary Member of the Michigan Historical Society. 2915

General Subjects of this Work.

- I. Etymologies of English Words, deduced from an Examination and Comparison of Words of corresponding Elements in Twenty Languages of Asia & Europe.
- II. The true Orthography of Words, as corrected by their Etymologies.
- III. Pronunciation exhibited and made obvious by the division of Words into Syllables, By Accentuation, By marking the sounds of the accented vowels, when necessary, or by general rules. 2916

2917

Complainant's Exhibits.

IV. Accurate and Discriminating Definitions, Illustrated, when doubtful or obscure, by Examples of their use, selected from Respectable Authors, or by familiar Phrases of Undisputed Authority.

Revised and Enlarged, By Chauncey A Goodrich,
Professor in Yale College.

2918

With pronouncing vocabularies of Scripture, Classical, and Geographical names, To which are now added Pictorial Illustrations, Table of Synonyms, Peculiar use of Words & Terms in the Bible, Appendix of new words, Pronouncing Table of names of Distinguished Persons, Abbreviations, Latin, French, Italian & Spanish Phrases, etc. the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

S. C. SPRAGUE Clerk of the District.
[Certificate attached.]

2919

DISTRICT OF MASSACHUSETTS. TO WIT:

District Clerk's Office.

BE IT REMEMBERED: That on the Thirtieth day of September Anno Domini 1847, George & Charles Merriam of the said District, have deposited in this office the Title of a Book the title of which is in the words following, to wit:

2920

An American Dictionary of the English Language; containing The whole vocabulary of the first Edition in two volumes Quarto; the Entire Corrections and Improvements of the Second Edition in two volumes Royal Octavo; to which is prefixed

An Introductory Dissertation On the Origin, History and Connection, of the Languages of Western Asia and Europe, with an Explanation of the Principles on which Languages are formed.

Copyright Certificates.

2921

By Noah Webster, LL. D., Member of the American Philosophical Society in Philadelphia; Fellow of the American Academy of Arts and Sciences in Massachusetts; Member of the Connecticut Academy of Arts & Sciences; Fellow of the Royal Society of Northern Antiquaries in Copenhagen; Member of the Connecticut Historical Society; Corresponding Member of the Historical Societies in Massachusetts, New York, and Georgia; of the Academy of Medicine in Philadelphia, and of the Columbian Institute in Washington; and Honary Member of the Michigan Historical Society.

2922

General subjects of this Work.

I. Etymologies of English words, deduced from an Examination and Comparison of Words of Corresponding Elements in twenty languages of Asia and Europe.

II. The true Orthography of Words, as Corrected by their Etymologies.

III. Pronunciation Exhibited and made obvious by the Division of Words into Syllables, by Accentuation, by marking the Sounds of the Accented vowels, when necessary or by General Rules.

2923

IV. Accurate and discriminating definitions, illustrated, when doubtful or obscure, by Examples of their use, selected from Respectable Authors, or by familiar Phrases of undisputed authority.

Revised and Enlarged By Chauncy A. Goodrich,
Professor in Yale College.

2924

With pronouncing vocabularies of Scripture, Classical and Geographical Names, the right whereof they claim as proprietors in conformity with an Act of Congress, entitled "An Act to amend the several Acts respecting Copy-rights."

(Certif.)

S. E. SPRAGUE

Clerk of the District.

(A copy deposited Dec. 28, 1847.)

2925

Complainant's Exhibits.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

THORVALD SOLBERG,
Register of Copyrights.

[SEAL]

Copyright Office of the United States of America,
Washington, D. C.

2926

1366

DISTRICT OF CONNECTICUT, SS.:

2927

Be it Remembered. That on the eighth day of April, A. D.: 1848: William W. Ellsworth and Henry White of the said District Executors of the last will and Testament of Noah Webster late of the said District deceased have deposited in this Office the title of a Book the title of which is in the words following: To Wit: "A High School Pronouncing Dictionary of the English Language abridged from the American Dictionary of Noah Webster, LL.D. with accented vocabularies of 'classical Scripture and Modern Geographical Names. By William G. Webster.'" The Right Whereof they claim as Proprietors in Conformity with an Act of Congress. Entitled an Act to amend the several Acts respecting Copy Rights.

JOHN J. CLEVELAND

2928

Clerk of the District of Connecticut.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

THORVALD SOLBERG,
Register of Copyrights.

[SEAL]

Copyright Office of the United States of America,
Washington, D. C.

Copyright Certificates.

2929

No. 1389

DISTRICT OF CONNECTICUT, ss.:

Be it Remembered. That on the twelfth day of August A. D. 1848, William W. Ellsworth and Henry White of the said District Executors of the last Will and Testament of Noah Webster late of the said District, deceased, have deposited in this Office the title of a Book the title of which is in the words following To Wit: "A Primary School Pronouncing Dictionary of the English Language abridged from the American Dictionary by Noah Webster, LL.D. with accented vocabularies of Classical Scripture, and Modern Geographical Names. By William G. Webster." The Right Whereof they claim as Proprietors in Conformity with an Act of Congress Entitled an Act to amend the several Acts respecting Copyrights.

2930

JOHN J. CLEVELAND

Clerk of District of Connecticut.

2931

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

THORVALD SOLBERG,

[SEAL]

Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2932

No. 1479

DISTRICT OF CONNECTICUT, ss.:

Be it Remembered. That on the Sixteenth day of September A. D. 1850. Henry White & Wm. W. Ellsworth Executors of the late Noah Webster LL D. have deposited in this Office the title of a Book the title of which is in the words following "To Wit." "Academic Edi-

2933

Complainant's Exhibits.

tion. A Dictionary of the English Language abridged from the American Dictionary By Noah Webster LL D. revised Edition. Containing several thousand additional words from the last edition of the larger work. Important Etymologies, Rules for Orthography and pronunciation of words. The accented Vocabularies of Walkers Key to the Classical Pronunciation of Greek. Latin & Scripture proper names with a Memoir of the Author.

2934 The Right Whereof they claim as Proprietors in Conformity with an Act of Congress Entitled An Act to amend the several Acts respecting Copyrights.

JOHN J. CLEVELAND

Clk. Dist. of Conn.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

2935

[SEAL]

THORVALD SOLBERG,

Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. To WIT:

District Clerk's Office.

2936 BE IT REMEMBERED, That, on the Nineteenth day of March Anno Domini 1856, G. & C. Merriam of the said District have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

A High School Pronouncing Dictionary of the English Language, Abridged from the American Dictionary of Noah Webster, LL D., With Accented Vocabularies of Classical, Scripture, And Modern Geographical Names. By William G. Webster.

the right whereof they claim as proprietors in conformity

Copyright Certificates.

2937

with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

S. E. SPRAGUE Clerk of District.

(A Copy Deposited August 22, 1856.)

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

2938

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. TO WIT:

District Clerk's Office. 2939

BE IT REMEMBERED, That, on the Fifteenth day of September Anno Domini 1856, G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

An Explanatory and Pronouncing Dictionary of The English Language. With Synonyms. Abridged from the American Dictionary of Noah Webster, LL. D. By William G. Webster, Assisted by Chauncey A. Goodrich, D. D. With Numerous Useful Tables.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights." 2940

S. E. SPRAGUE Clerk of District.

(A Copy Deposited Dec. 3, 1856.)

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof,

2914

Complainant's Exhibits.

the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2942

DISTRICT OF MASSACHUSETTS. TO WIT:

District Clerk's Office.

BE IT REMEMBERED, That, on the Nineteenth day of March Anno Domini 1856, G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

A Dictionary of The English Language; Abridged from the American Dictionary, By Noah Webster, LL.D. Revised Edition.

2943

Containing Several Thousand Additional Words, From the Last Edition of the larger work; important Etymologies; Rules for The Orthography and pronunciation of Words; The Accented Vocabularies of Walker's Key To the Classical Pronunciation of Greek, Latin And Scripture proper names. With a Memoir of the Author. New Edition, With Additions and Improvements, Including A Copious Geographical Vocabulary.

2944

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

S. E. SPRAGUE Clerk of District.

(A copy deposited August 22, 1856.)

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof,

Copyright Certificates.

2945

the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2946

DISTRICT OF MASSACHUSETTS. To Wit:

District Clerk's Office.

BE IT REMEMBERED, That, on the Nineteenth day of March Anno Domini 1856, G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

A Primary School Pronouncing Dictionary of the English Language; Abridged from the American Dictionary By Noah Webster, LL.D.,

2947

With Accented Vocabularies of Classical Scripture, And Modern Geographical Names. By William G. Webster.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

S. E. SPRAGUE Clerk of District.

(A Copy Deposited August 22, 1856.)

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

2948

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2949

Complainant's Exhibits.

DISTRICT OF MASSACHUSETTS. To Wit:

District Clerk's Office.

BE IT REMEMBERED, That, on the Second day of February, Anno Domini 1863, George, Charles and Homer Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following to wit:

2950 The Army and Navy Pocket Dictionary. By William G. Webster.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

A copy deposited
March 2d 1863.

S. E. SPRAGUE

Clerk of the District.

2951

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-sixth day of March, 1912.

THORVALD SOLBERG,

[SEAL]

Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2952

DISTRICT OF MASSACHUSETTS. To Wit:

District Clerk's Office.

BE IT REMEMBERED, That, on the Twenty-seventh day of April Anno Domini 1864, George, Charles & Homer Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

The Army and Navy Pocket Dictionary.

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2953

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

S. E. SPRAGUE Clerk of District.

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2954

THORVALD SOLBERG,

[SEAL]

Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. TO WIT:

District Clerk's Office.

BE IT REMEMBERED, That, on the Eighth day of August Anno Domini 1864, G. & C. Merriam of the said District, have deposited in this Office the Title of a Book, the title of which is in the words following, to wit: 2955

Appendix to Webster's Dictionary, Containing Explanatory and Pronouncing Vocabularies of The names of noted Fictitious Persons, Places, Etc.; Modern Geographical names; and Common English Christian names, with their equivalents in several other languages; Pronouncing Vocabularies of Scripture Proper names; Greek and Latin Proper names; Modern Geographical names; and Modern Biographical names; and Explanatory Tables of Quotations, Words, Phrases, Proverbs, Etc., From the Greek, the Latin and Modern Foreign Languages; Abbreviations and Contractions used in Writing and Printing; and Arbitrary signs used in Writing and Printing. To which is added. A Classified Selection of Pictorial Illustrations. 2956

the right whereof they claim as proprietors in conformity

2957

Complainant's Exhibits.

with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

A copy deposited.

Sept. 15, 1864—

S. E. SPRAGUE
Clerk of the District.

I hereby certify that the foregoing is a true copy of
2958 the original record of copyright. In witness whereof,
the seal of this Office has been hereto affixed this twenty-
second day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2959 DISTRICT OF MASSACHUSETTS. To WIT:

District Clerk's Office.

BE IT REMEMBERED, That, on the Eighth day of August
Anno Domini 1864, G. & C. Merriam of the said District,
have deposited in this Office the Title of a Book, the
title of which is in the words following, to wit:

An American Dictionary of the English Language By
Noah Webster, LL.D. Thoroughly revised, and greatly
enlarged and improved By Chauncey A. Goodrich, D. D.,
2960 LL.D., Late Professor of Rhetoric and Oratory, and also
Professor of the Pastoral charge in Yale College, And
Noah Porter, D. D., Clark Professor of Moral Philosophy
and Metaphysics in Yale College.

the right whereof they claim as proprietors in conformity
with an Act of Congress, entitled, "An Act to amend the
several Acts respecting Copyrights."

A copy deposited

Sept. 15—1864.

S. E. SPRAGUE
Clerk of the District.

Copyright Certificates.

2961

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2962

DISTRICT OF MASSACHUSETTS. To WIT:

District Clerk's Office.

BE IT REMEMBERED, That, on the sixteenth day of November Anno Domini 1867 G. & C. Merriam of the said District have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

Counting House Edition A Dictionary of the English Language, Explanatory, Pronouncing, Etymological, And Synonymous, With an Appendix Containing Various Useful Tables. Mainly Abridged from the Latest Edition of the Quarto Dictionary of Noah Webster L.L.D. By William G. Webster And William A. Wheeler Illustrated With more than Three Hundred and Fifty Engravings On Wood.

2963

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

A copy deposited Mar. 2, 1869.

2964

Clerk of the District.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2965

Complainant's Exhibits.

DISTRICT OF MASSACHUSETTS. TO WIT:

District Clerk's Office.

BE IT REMEMBERED, That, on the sixteenth day of November Anno Domini 1867 G. & C. Merriam of the said District have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

2966 Academic Edition A Dictionary of the English Language, Explanatory, Pronouncing, Etymological, And Synonymous. With an Appendix Containing Various Useful Tables. Mainly Abridged from the Latest Edition of the Quarto Dictionary of Noah Webster L.L.D By William G. Webster And William A. Wheeler Illustrated With more than Three Hundred and Fifty Engravings On Wood.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

2967

A copy deposited May 28, 1868.

Clerk of the District.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

THORVALD SOLBERG,

[SEAL]

Register of Copyrights.

2968

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. TO WIT:

District Clerk's Office.

BE IT REMEMBERED, That, on the sixteenth day of November Anno Domini 1867 G. & C. Merriam of the said District have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

Copyright Certificates.

296

A High School Dictionary of the English Language Explanatory, Pronouncing, and Synonymous, With an Appendix containing Various Useful Tables, Mainly Abridged from the Latest Edition of The Quarto Dictionary of Noah Webster, LL.D. By William G. Webster And William A. Wheeler Illustrated with more than Three Hundred Engravings on Wood.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights." 297

A copy deposited
June 22, 1868.

Clerk of the District.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights. 297

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. To Wit:

District Clerk's Office.

BE IT REMEMBERED, That, on the sixth day of December Anno Domini 1869 G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit: 297

A Pocket Dictionary Of The English Language. Abridged from the American Dictionary of Noah Webster, LL. D., By William G. Webster And William A. Wheeler Illustrated with nearly Two Hundred Engravings on Wood.

973

Complainant's Exhibits.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

EDWARD DEXTER

Clerk of the District.

2974

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

THORVALD SOLBERG,

[SEAL]

Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. To Wit:

2975

District Clerk's Office.

BE IT REMEMBERED, That, on the twenty-seventh day of July Anno Domini 1867 G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

2976

Appendix To Webster's Dictionary: Containing A glossary of Scottish Words and Phrases; A Vocabulary of Perfect and Allowable Rhymes; A Concise Account of the Chief Deities, Heroes, Etc., In the Greek and Roman Mythology; Explanatory and Pronouncing Vocabularies Of Modern Geographical Names and Common English Christian Names; Pronouncing Vocabularies of Scripture Proper Names; Greek and Latin Proper Names; Modern Geographical Names and Modern Biographical Names; And Explanatory Tables of Quotations, Words, Phrases, Etc., from the Greek, the Latin, and Modern Foreign Languages; Abbreviations used in Writing and Printing; And Arbitrary Signs used in Writing and Printing. To which are added Pictorial Illustrations of Certain Terms defined in the Preceding Dictionary.

Copyright Certificates.

2977

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

A copy deposited Oct. 10, 1867.

ELISHA BASSETT

Clerk of the District pro tem.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912. 2978

[SEAL]

THORVALD SOLBERG,

Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

DISTRICT OF MASSACHUSETTS. To Wit:

2979

District Clerk's Office.

BE IT REMEMBERED, That, on the twenty-seventh day of July Anno Domini 1867 G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

A Common-School Dictionary of the English Language, Explanatory, Pronouncing, and Synonymous. With an Appendix containing various useful tables. Mainly abridged from the latest edition of the American Dictionary of Noah Webster, LL. D., By William G. Webster and William A. Wheeler. Illustrated with nearly Two Hundred and Fifty Engravings on Wood. 2980

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

A copy deposited Jan. 22, 1868.

ELISHA BASSETT,

Clerk of the District pro tem.

2981

Complainant's Exhibits.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2982

DISTRICT OF MASSACHUSETTS. To Wit:

District Clerk's Office.

BE IT REMEMBERED, That, on the twenty-seventh day of July Anno Domini 1867 G. & C. Merriam of the said District, have deposited in this Office the Title of a Book the title of which is in the words following, to wit:

2983 A Primary School Dictionary of the English Language, Explanatory, Pronouncing, and Synonymous. With an Appendix containing various useful tables. Mainly abridged from the latest edition of the American Dictionary of Noah Webster, LL. D., By William G. Webster and William A. Wheeler. Illustrated with nearly Two Hundred Engravings on Wood.

the right whereof they claim as proprietors in conformity with an Act of Congress, entitled, "An Act to amend the several Acts respecting Copyrights."

A copy deposited Jan. 22, 1868.

2984

ELISHA BASSETT,
Clerk of the District pro tem.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

Copyright Certificates.

2985

1877, No. 14569H.

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 14th day of December, 1877, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book the title or description of which is in the following words, to wit:

Webster's Handy Dictionary of the English Language; (etc.). From the latest Edition of the large Dictionary of Noah Webster, LL. D. By Loomis J. Campbell. New York: Ivison, Blakeman, Taylor & Co., 1878. 2986

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

A. R. SPOFFORD,
Librarian of Congress.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912. 2987

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

2988

1877, No. 12345H.

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 26th day of October, 1877, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Webster's Handy Dictionary. A Handy Dictionary of

2989

Complainant's Exhibits.

the English Language; giving the spelling, pronunciation (etc.), and many engravings from the latest edition of the large dictionary of Noah Webster, LL.D. By Loomis J. Campbell.

2990

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copy-rights.

A. R. SPOFFORD,
Librarian of Congress.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

THORVALD SOLBERG,
Register of Copyrights.

[SEAL]

2991 Copyright Office of the United States of America,
Washington, D. C.

1879, No. 2578K.

A

LIBRARY OF CONGRESS, to wit:

2992 BE IT REMEMBERED: That on the 24th day of February, 1879, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

New Edition with Supplement. An American Dictionary of the English Language. By Noah Webster, LL.D. Thoroughly revised, and greatly enlarged and improved. By Channcy A. Goodrich, D.D., and Noah Porter, D.D., with an appendix of useful tables, to which is added a supplement of nearly five thousand new words with their definitions, etc. Springfield, Mass.: G. & C. Merriam, 1879.

Copyright Certificates.

2993

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

A. R. SPOFFORD,
Librarian of Congress.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912. 2994

[SEAL]

THORVALD SOLBERG,
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

1879, No. 2579K.

A

2995.

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 24th day of February, 1879, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Appendix to Webster's Dictionary. Containing Explanatory and Pronouncing Vocabularies of the names of noted fictitious persons, places, etc. Modern Geographical Names; and Common English Christian Names; with their Equivalents in several other languages; pronouncing vocabularies of Scripture, proper names, greek and latin proper names, and modern geographical names, also a new pronouncing Biographical Dictionary and explanatory Tables (etc.), to which is added a classified selection of Pictorial Illustrations. Springfield, Mass.: G. & C. Merriam, 1879. 2996.

the right whereof they claim as proprietors in conform-

2997

Complainant's Exhibits.

ity with the laws of the United States respecting Copyrights.

A. R. SPOFFORD,
Librarian of Congress.

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2998

THORVALD SOLBERG,
Register of Copyrights.

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Copyright Office of the United States of America,
Washington, D. C.

1879, No. 2580K

A

2999 LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 24th day of February, 1879, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

A Pronouncing Biographical Dictionary, containing nearly ten thousand names of Noteworthy Persons, with their nationality, their station, their profession or occupation, and the dates of their birth and death, etc., etc., etc. Compiled and arranged by Loomis J. Campbell.

3000 Springfield, Mass., G. & C. Merriam.

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

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Librarian of Congress.

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3001

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Washington, D. C.

1879, No. 2581K

3002

A

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BE IT REMEMBERED: That on the 24th day of February, 1879, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Supplement of Additional Words and Definitions.

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Librarian of Congress.

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Washington, D. C.

3005

Complainant's Exhibits.

1879, No. 15248K

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 13th day of November, 1879, John Marshall Wood, of the United States, has deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

3006 A Handy Dictionary of the English Language; giving the spelling, pronunciation, and meanings of the Words, useful Tables, the Metric System, etc., and many Engravings. New York: 1879.

the right whereof he claims as proprietor in conformity with the laws of the United States respecting Copyrights.

A. R. SPOFFORD,
Librarian of Congress.

3007

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Register of Copyrights.

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Copyright Office of the United States of America,
Washington, D. C.

3008

1882, No. 4391N.

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 20th day of March, 1882, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Subscription Edition, with historical supplement. An American Dictionary of the English Language, by Noah

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3009

Webster, LL.D. (etc.), with an Appendix of useful Tables (etc.), also a New Pronouncing Biographical Dictionary (etc.), with a Historical Supplement. Springfield, Mass., G. & C. Merriam, 1882.

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Librarian of Congress.

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Copyright Office of the United States of America,
Washington, D. C.

3011

1882, No. 4392N.

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 20th day of March, 1882, G. & C. Merriam, of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Historical Supplement of Webster's Unabridged Dictionary, containing a brief history of the United States of America; together with lives of the Presidents from Washington to Arthur, and accounts, historical and descriptive, of the thirty-eight States of the Union (etc.), and valuable statistics of the civil and industrial condition of the principal nations of the world, and a map of the United States. Springfield, Mass., G. & C. Merriam, 1882.

3012

3013

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A. R. SPOFFORD,
Librarian of Congress.

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Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

1882, No. 21765N

A

3015

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 22nd day of December, 1882, John Marshall Wood, of the United States, has deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

A People's Dictionary of the English Language; to which is added The People's Manual in Two Parts. Part 1, The American Republic, and its Constitutional Government. Part 2, Compendum of Popular Information.

3016

New York: 1882.

the right whereof he claims as proprietor in conformity with the laws of the United States respecting Copyrights.

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Copyright Office of the United States of America,
Washington, D. C.

1884, No. 20365P.

3018

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 9th day of October, 1884, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit.

Webster's Practical Dictionary. A Practical Dictionary of the English Language (etc.), chiefly derived from Webster's Unabridged Dictionary. Edited under the supervision of Noah Porter, D.D., LL.D. By Dorsey Gardner. With nearly Fifteen Hundred Illustrations.

3019

New York and Chicago: Ivson, Blakeman, Taylor and Company. Springfield, Mass: G. & C. Merriam and Company. 1884.

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A. R. SPOFFORD,
Librarian of Congress.

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Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

3021

Complainant's Exhibits.

1884, No. 20366P

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 9th day of October, 1884, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

3022 Webster's Condensed Dictionary, a Condensed Dictionary of the English Language, with Copious Etymological Derivation (etc.), chiefly derived from the unabridged dictionary of Noah Webster, LL.D. Edited under the supervision of Noah Porter, D.D., LL.D. By Dorsey Gardner, with over fifteen hundred illustrations.

New York and Chicago, Ivison, Blakeman, Taylor and Company. Springfield, Mass., G. & C. Merriam and Company, 1884.

3023 the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

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Librarian of Congress.

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Washington, D. C.

Copyright Certificates.

3025

1884, No. 20367P.

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 9th day of October, 1884, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Appendix to Webster's Dictionary: (etc.). Explanatory and Pronouncing vocabularies of modern geographical names and common English Christian Names (etc.), and a supplement of nearly four thousand new words and meanings. Springfield, Mass.: G. & C. Merriam & Co. 3026

the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

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Librarian of Congress.

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Copyright Office of the United States of America,
Washington, D. C.

3028

1885, No. 309Q

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 5th day of January, 1885, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

New Edition with Supplement. An American Diction-

3029

Complainant's Exhibits.

ary of the English Language. By Noah Webster, LL.D. Thoroughly revised and greatly enlarged and improved. By Chauncey A. Goodrich, D.D., and Noah Porter, D.D., LL.D. With an appendix of useful Tables (etc.). A New Pronouncing Gazetteer of the World (etc.). Also a New Pronouncing Biographical Dictionary (etc.).

Springfield, Mass.: G. & C. Merriam & Co., 1885.

3030

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Librarian of Congress.

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1886, No. 9837R.

A

LIBRARY OF CONGRESS, to wit:

3032

BE IT REMEMBERED: That on the 23rd day of April, 1886, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Subscription Edition, with Compendium. A Dictionary of the English Language (etc.), of Noah Webster, LL.D., with supplement of nearly four thousand new words and meanings, and a New Compendium, Historical and Statistical, of the Nations of the World, Illustrated

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3033

by more than six hundred Engravings on Wood, and eight pages Colored Plates.

Springfield, Mass., G. & C. Merriam & Co., 1886.

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Librarian of Congress. 3034

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3035

1890, No. 21194V.

A

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BE IT REMEMBERED: That on the 2d day of July, 1890, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit.

Webster's International Dictionary of the English Language. Being the authentic edition of Webster's Unabridged Dictionary, comprising the issues of 1864, 1879 and 1884. Now thoroughly revised and enlarged under the supervision of Noah Porter, D.D., LL.D., of Yale University. With a voluminous appendix. Springfield, Mass., G. & C. Merriam & Co., 1890. 3036

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3037

Complainant's Exhibits.

ity with the laws of the United States respecting Copyrights.

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3038

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1890, No. 31856V.

A

3039 LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 14th day of October, 1890, G. & C. Merriam & Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

3040 Historical Supplement to Webster's International Dictionary, containing a brief history of the United States of America; with brief biographies of the Presidents from Washington to Harrison, and accounts, historical and descriptive, of the Forty-four States of the Union, and of the Territories (etc.). Statistical tables of population (etc.). A List of the Chief Cities and Statistics of the Civil and Industrial condition of the principal nations. Illustrated. Springfield, Mass., G. & C. Merriam & Co.

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3041

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3042

1892, No. 36769X

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 8th day of September, 1892, G. & C. Merriam Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

A Pronouncing Gazetteer or Geographical Dictionary 3043
of the World. By Titus Munson Coan, A. M., M. D.
Springfield, Mass., G. & C. Merriam Company.

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the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

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3045

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1892, No. 32753X

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 9th day of August, 1892, G. & C. Merriam Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

3046 Webster's High School Dictionary. A Dictionary of the English Language With an Appendix Abridged from Webster's International Dictionary 800 Illustrations. Springfield, Mass., G. & C. Merriam Co.

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3048

1892, No. 32754X

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 9th day of August, 1892, G. & C. Merriam Co., of Springfield Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Webster's Common School Dictionary. A Dictionary of the English Language Designed for use in Common

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3049

Schools, Abridged from Webster's International Dictionary. 500 Illustrations. Springfield, Mass., G. & C. Merriam Co.

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Librarian of Congress. 3050

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Copyright Office of the United States of America,
Washington, D. C.

3051

1892, No. 2087X

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 27th day of September, 1892, G. & C. Merriam Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

A Dictionary of the English Language Designed for use in Primary Schools, Abridged from Webster's International Dictionary, 400 Illustrations. 3052

New York, Cincinnati, Chicago. American Book Company, Springfield, Mass.: G. & C. Merriam Co.

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3054

1895, No. 19964AA.

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 11th day of April, 1895, G. & C. Merriam Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

3055 Webster's Academic Dictionary. A Dictionary of the English Language Giving the Derivations, Punctuations, Definitions and Synonyms of a Large Vocabulary of the Words in Common Use. With an appendix containing various useful Tables Abridged From Webster's International Dictionary. Over 800 Illustrations. Springfield, Mass., G. & C. Merriam Co.

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3057

1896, No. 36958B².

A

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the 25th day of June, 1896, G. & C. Merriam Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Webster's Countinghouse Dictionary. A Dictionary of the English Language. Many Abridged From Webster's International Dictionary. Springfield, Mass.: G. & C. Merriam Co. 3058

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Librarian of Congress.

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1898, No. 53047.

B

3060

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the tenth day of September, 1898, G. & C. Merriam Co., of Springfield, Mass., have deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Webster's Collegiate Dictionary. A Dictionary of the English Language giving the derivations, pronunciations,

3061

Complainant's Exhibits.

definitions and synonyms of a large vocabulary of the words occurring in literature, art, science, and the common speech. With an appendix containing a copious Scotch Glossary, a pronouncing vocabulary of proper names, and various other useful tables. Mainly abridged from Webster's International Dictionary. Over 1100 Illustrations. G. & C. Merriam Co., Springfield, Mass.

- 3062 the right whereof they claim as proprietors in conformity with the laws of the United States respecting Copyrights.

JOHN RUSSEL YOUNG,
Librarian of Congress.

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Register of Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

3063

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Copyright Office of the United States of America,
Washington, D. C.

3064

1898, No. 34290.

B

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the fourth day of June, 1898, G. & C. Merriam Co., of Springfield, Mass., hath deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

Australasian Edition, Webster's International Dic-

Copyright Certificates.

3065

tionary of the English Language, being the Authentic Edition of Webster's Unabridged Dictionary comprising the issues of 1864, 1879 and 1884, now thoroughly revised and enlarged under the supervision of Noah Porter, D.D., LL.D. With a voluminous appendix and an Australasian supplement. Springfield, Mass., G. & C. Merriam Co., 1898.

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Register of Copyrights.

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Washington, D. C.

1898, No. 63233.

3068

B

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the twenty-eighth day of October, 1898, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title or description of which is in the following words, to wit:

6069

Complainant's Exhibits.

Historical Supplement to Webster's International Dictionary, including a brief history of the United States: The Union, The States; The Presidents; The events by date. A brief chronological history of all nations; from 6000 B. C. to the present time; with political and social conditions of all modern countries, tables and charts. G. & C. Merriam Co., Springfield, Mass.

6070 the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

JOHN RUSSEL YOUNG,
Librarian of Congress.

By
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Register of Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

6071

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Copyright Office of the United States of America,
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6072

Class A., XXc. No. 20887.

E

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the twenty-first day of August, 1900, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit:

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3073

New edition with supplement of new words, Webster's International Dictionary of the English Language, Noah Porter, D.D., LL.D. With a voluminous appendix to which is now added a supplement of twenty-five thousand words and phrases. W. T. Harris, Ph.D., LL.D., Editor-in-chief. Springfield, Mass.: G. & C. Merriam Co., 1900.

the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights. 3074

HERBERT PUTNAM,
Librarian of Congress.

By
THORVALD SOLBERG,
Register of Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

3075

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Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

3076

Class A, XXc. No. 63275.

E

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the third day of July, 1903, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit:

3077

Complainant's Exhibits.

Webster's Unabridged Dictionary. An American Dictionary of the English Language by Noah Webster, LL.D. thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D. and Noah Porter, D.D., LL.D. With an appendix of useful tables including recent population statistics of the world and a supplement of more than five thousand words and phrases.

3078 the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

By
THORVALD SOLBERG,
Register of Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

3079

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Copyright Office of the United States of America,
Washington, D. C.

3080

Class A, XXc. No. 63276.

E

LIBRARY OF CONGRESS, to wit:

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3081

Supplement of Additional Words and Definitions to the 1864 edition of Webster's Unabridged Dictionary.

the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

By THORVALD SOLBERG, 3082
Register of Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

I hereby certify that the foregoing is a true copy of the original record of copyright. In witness whereof, the seal of this Office has been hereto affixed this twenty-second day of March, 1912.

[SEAL]

THORVALD SOLBERG, 3083
Register of Copyrights.

Copyright Office of the United States of America,
Washington, D. C.

Class A, XXc. No. 120984.

E

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the sixth day of July, 1905, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit. 3084

Webster's Little Gem Dictionary and Reference Manual Abridged from Webster's International Dictionary. A large pronouncing vocabulary with definitions, synonyms, use of capitals, etc. Springfield, Mass., U. S. A., G. & C. Merriam Co., 1905.

3085

Complainant's Exhibits.

the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

By
THORVALD SOLBERG,
Register of Copyrights.

3086

Office of the Register of Copyrights,
Washington, D. C.

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Copyright Office of the United States of America,
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Class A, XXc. No. 125378.

E

LIBRARY OF CONGRESS, to wit:

3088

BE IT REMEMBERED: That on the second day of September, 1905, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit:

Australasian Edition, Webster's International Dictionary of the English Language. Being the authentic edition of Webster's Unabridged Dictionary, comprising the issues of 1864, 1879, and 1884, thoroughly revised and much enlarged under the supervision of Noah Porter, D.D., LL.D. With a voluminous appendix to which is now added a supplement of twenty-five thousand words and phrases. W. T. Harris, Ph.D., LL.D., Editor-in-

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3089

chief. Springfield, Mass.: U. S. A., G. & C. Merriam Company, 1906.

the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

By
THORVALD SOLBERG,
Register of Copyrights. 3090

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Class A, XXc. No. 149443.

E

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the twenty-sixth day of June, 1906, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit: 3092

Webster's Practical Dictionary. A Practical Dictionary of the English Language giving the correct spelling, pronunciation and definitions of words based on the Unabridged Dictionary of Noah Webster, LL.D. With an appendix comprising a pronouncing vocabulary of

3093

Complainant's Exhibits.

biblical, classical, mythological, historical, and geographical proper names; [etc]. Edited under the supervision of Noah Porter, D.D., LL.D. by Dorsey Gardner. With nearly fifteen hundred illustrations. Springfield, Mass.: G. & C. Merriam Co., 1906.

3094

the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

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3096

Class A, XXc. No. 149442.

E

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the twenty-sixth day of June, 1906, G. & C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit:

Webster's Condensed Dictionary. A Condensed Dictionary of the English Language giving the correct spel-

Copyright Certificates.

3097

ling, pronunciation and definition of words based on the Unabridged Dictionary of Noah Webster, LL.D. With an appendix comprising a pronouncing vocabulary of biblical, classical, mythological, historical and geographical proper names; [etc.]. Edited under the supervision of Noah Porter, D.D., LL.D. By Dorsey Gardner. With nearly fifteen hundred illustrations. Springfield, Mass.: G. & C. Merriam Co., 1906.

the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

3098

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3100

Class A, XXc. No. 149444.

E

LIBRARY OF CONGRESS, to wit:

BE IT REMEMBERED: That on the twenty-sixth day of June, 1906, G. and C. Merriam Company, of Springfield, Mass., hath deposited in this office the title of a Book, the title of which is in the following words, to wit:

3101

Complainant's Exhibits.

Webster's Practical Dictionary. A practical dictionary of the English Language giving the correct spelling, pronunciation and definitions of words based on the Unabridged Dictionary of Noah Webster, LL.D., Edited under the supervision of Noah Porter, D.D., LL.D., by Dorsey Gardner. With nearly fifteen hundred illustrations. Springfield, Mass.: G. & C. Merriam Co., 1906.

3102 the right whereof it claims as proprietor in conformity with the laws of the United States respecting Copyrights.

HERBERT PUTNAM,
Librarian of Congress.

By
THORVALD SOLBERG,
Register of Copyrights.

Office of the Register of Copyrights,
Washington, D. C.

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3104

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CERTIFICATE OF COPYRIGHT REGISTRATION

THIS IS TO CERTIFY, In conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that TWO copies of the

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3105

BOOK named herein have been deposited in this Office under the provisions of the said Act, together with the AFFIDAVIT prescribed in section 16 thereof; and that an entry for copyright for the first term of 28 years from the date of publication of said book has been duly registered in the name of G. & C. Merriam Co., Springfield, Mass. Book entitled Webster's New International Dictionary of the English Language, W. T. Harris, F. Sturges Allen, Editors. Springfield, Mass., G. & C. Merriam Company.

3106

Date of publication Sept. 17, 1909.

Copies received Sept. 20, 1909.

Affidavit received Sept. 20, 1909.

Entry: Class A, XXc, No. 246829.

THORVALD SOLBERG,

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3107

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3108

3109

Complainant's Exhibits.

edition, Noah Porter, Dorsey Gardner, Editors. Springfield, G. & C. Merriam Co., 1909.

Date of publication Oct. 2, 1909.

Copies received Oct. 12, 1909.

Affidavit received Oct. 12, 1909.

Entry: Class A, XXc, No. 248454.

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3110

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 3111 Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that TWO copies of the BOOK named herein have been deposited in this Office under the provisions of the said Act, together with the AFFIDAVIT prescribed in section 16 thereof; and that an entry for copyright for the first term of 28 years from the date of publication of said book has been duly registered in the name of G. & C. Merriam Co., Springfield, Mass. Book entitled Reference History Edition. Webster's New International Dictionary of the English
 3112 Language, [etc.] With a reference history of the world, W. T. Harris, Editor-in-chief, F. Sturges Allen, General Editor. Springfield: G. & C. Merriam Co.

Date of publication Oct. 8, 1909.

Copies received Oct. 13, 1909.

Affidavit received Oct. 13, 1909.

Entry: Class A, XXc, No. 248516.

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3114

Date of publication Dec. 24, 1909.
Copies received Dec. 31, 1909.

3115

Affidavit received Dec. 31, 1909.
Entry: Class A, XXe, No. 253649.

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3117

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AFFIDAVIT prescribed in section 16 thereof; and that an entry for copyright for the first term of 28 years from the date of publication of said book has been duly registered in the name of G. & C. Merriam Co., Springfield, Mass. Book entitled Webster's Practical Dictionary. A practical dictionary of the English Language, Noah Porter, Dorsey Gardner (et al) Editors. Springfield: G. & C. Merriam Co., 1910.

3118

Date of publication June 21, 1910.

Copies received June 25, 1910.

Affidavit received June 25, 1910.

Entry: Class A, XXc, No. 265939.

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3119

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3120

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Copyright Registration Certificates.

3121

Language. Illustrations. Springfield, Mass.: G. & C. Merriam Co., 1910.

Date of publication Aug. 8, 1910.

Copies received Aug. 9, 1910.

Affidavit received Aug. 9, 1910.

Entry: Class A, XXc, No. 268842.

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Date of publication Oct. 9, 1911.

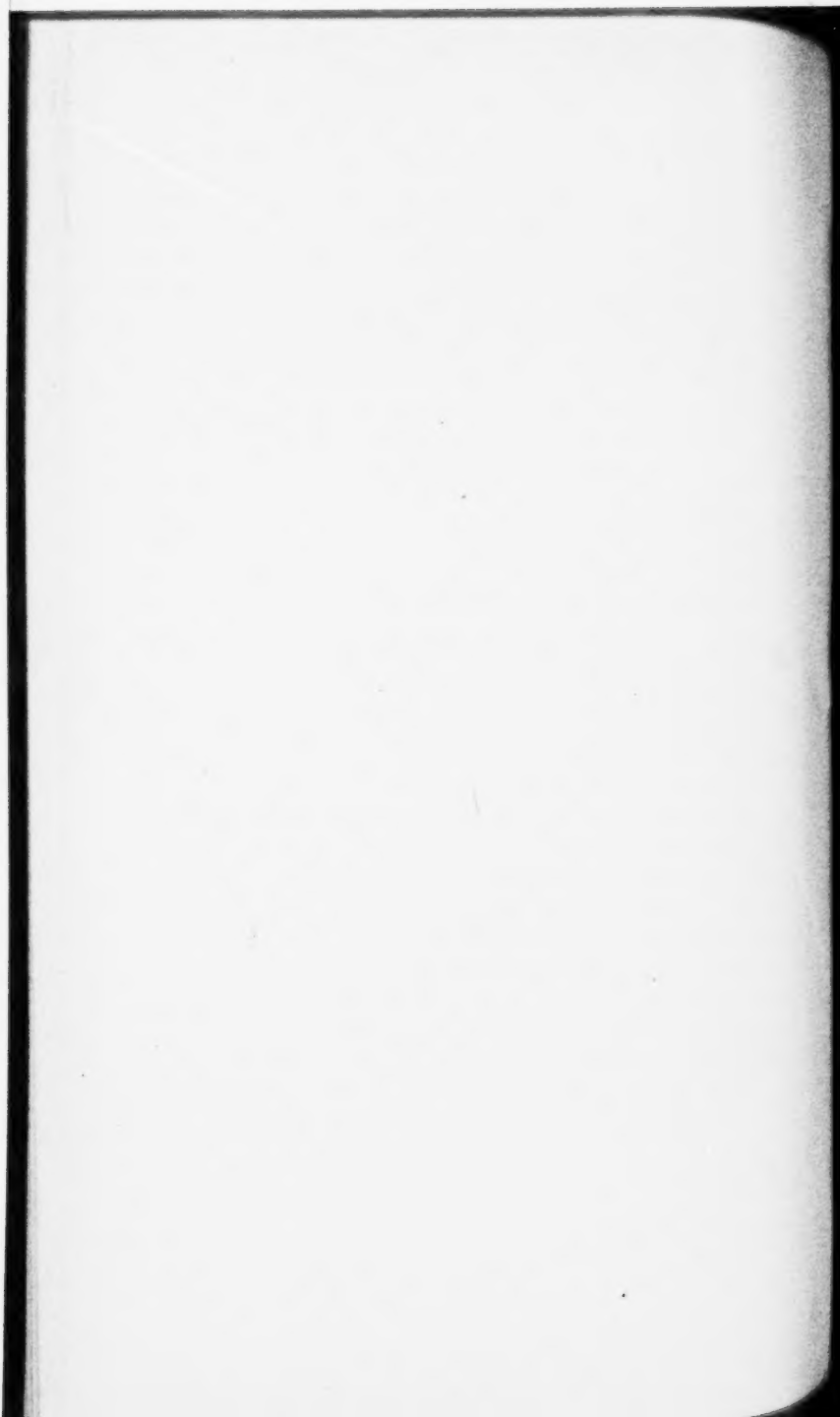
Copies received Oct. 11, 1911.

Affidavit received Oct. 11, 1912.

Entry: Class A, XXc, No. 299187.

[SEAL]

THORVALD SOLBERG,
Register of Copyrights. 3124



"Webster Contract of 1853."

This Indenture between William W. Ellsworth of Hartford, Conn. and his wife Emily W. Ellsworth; Chauncey A. Goodrich of New Haven, Conn. and his wife Julia W. Goodrich; Henry Jones of Bridgeport, Conn. and his wife Eliza S. W. Jones; and William G. Webster of New Haven, Conn. and their Executors, Administrators and Assigns, *parties of the first part*; and Messrs. G. & C. Merriam and their successors of Springfield, Mass. and their Executors, Administrators and Assigns, *parties of the second part*, 3130

Witnesseth:

That, *Whereas* renewals may be obtained by the surviving children of Noah Webster L.L.D. on the copyright of his American Dictionary from April 14, 1856, and on the copyright of his Elementary Spelling Book from May 22, 1857; and

Whereas the said William G. Webster and his sisters Emily W., Julia W., and Eliza S. W., and their husbands aforesaid, have united their prospective interest in said renewals, and engaged by mutual covenants, that whichever of said children of Dr. Webster may live to take part in said renewals, shall hold the same for the joint benefit of the whole collectively; and 3131

Whereas the parties of the second part have obtained from the parties of the first part the right of publishing said American Dictionary, so far as the same may be conferred by renewal on the parties of the first part; and are desirous to obtain a like right in reference to said Elementary Spelling Book, together with the privilege of making a revision of the same and of said American Dictionary, and also the right of making and publishing certain Abridgements of the said American Dictionary or of publishing certain Abridgements now published by F. J. Huntington of New York, or improved editions of the same; 3132

3133

Complainant's Exhibits.

Therefore, with a view to make a permanent arrangement on this subject,

The parties of the first part, in consideration of the covenants herein and hereafter made by the parties of the second part, do hereby covenant and agree with the same, *as follows*: each one covenanting for himself only and not to be liable for the others, any more than if this contract was *several* throughout.

- 3134 1. That they will take all necessary and legal measures to obtain said renewals in the names of said William G. Webster, Emily W. Ellsworth, Julia W. Goodrich, Eliza S. W. Jones, and Louisa Webster, children of said Noah Webster, or such of them as may be alive at the time for obtaining such renewals; Or will permit and do hereby authorize and permit, said G. & C. Merriam or their Assigns to take the usual and proper measures and proceedings to obtain a renewal of said copyrights, in 1856 and 1857, in behalf of the children of Dr. Webster who are parties to this instrument; nor will said parties of the
- 3135 first part do or assent to any act which shall defeat or impair the right hereby vested in said G. & C. Merriam.
2. That whatever share they may thus obtain in the right of publishing said Dictionary and Spelling Book, the same (when acquired) shall be transferred to and vest in the parties of the second part, for the whole period of its duration by law: And they do hereby assign and convey to said parties of the second part all the title and interest which they may at any time obtain in said exclusive right; and do further covenant, that whenever they
- 3136 shall obtain any such share, they will execute all further conveyances which may be deemed necessary to perfect this grant, and fully to vest said exclusive right in the parties of the second part.
3. That the parties of the second part may make a revision of said Dictionary, and a new Webster's Spelling Book, or revised edition of the present Spelling Book at their own expense through the agency of persons to be appointed by the parties of the first part (whenever required by the parties of the second part); and may take

out copyrights of said revisions and said new Speller in their own names, and for the exclusive benefit of said parties of the second part. And they may publish said revised edition of the American Dictionary, and said new Speller or revised edition of the present speller or both the present Speller and a new Speller if they so desire.

4. That the parties of the second part may at their own expense, through the agency of persons to be appointed by the parties of the first part (as provided for above), make and publish new Abridgements of said American Dictionary, corresponding in size and matter to the present Academic, High School, Primary, and Pocket Dictionaries, and also an intermediate Abridgement between said High School and Primary; or may prepare & publish new and improved editions of the present Academic, High School, and Primary Dictionaries, and a new Pocket and Intermediate. And they may take out copyrights on said Abridgements in their own names, and for the exclusive benefit of the parties of the second part; Provided, however, that the said Ellsworth, being Executor or Trustee of the Estate of said Noah Webster, is not hereby to be held as granting any interest which he holds in said character, but only the interest which he and his wife may have under the renewals aforesaid. 3138

5. That said parties of the first part will not make nor license the making of any Abridgement of said American Dictionary which is smaller in size or matter than the University Abridgement, so called. And if a larger Abridgement be at any time substituted through their agency, in the place of said University, such larger Abridgement shall be intermediate in size and matter between the present Academic and the Royal Octavo now published by Messrs. Harpers and shall be larger than the University aforesaid. And the parties of the first part will bind the publishers thereof, while they continue to print under the copyright thereon, not to make any Abridgement smaller than the one thus substituted; and will give to the parties of the second part the benefit of such restriction, with power to sue (if necessary) for the 3140

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Complainant's Exhibits.

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enforcement thereof. And they do further agree, that they will not authorize the publication at *one* and the *same* time, of both said University and said new Abridgement, unless compelled to allow the continuance of the publication of the University by present legal obligations to Francis J. Huntington. And said parties of the first part (or either of them) will not license the publication of the present Pocket Dictionary in any form than the present, so as to assume the form or to be called by the name of a School Dictionary; nor will they authorize any other party to make or publish any Abridgement of a size less than the present Academic, so as to interfere with the rights and interests of said parties of the second part.

6. That they will give to the parties of the second part the full benefit of a certain covenant made by Messrs. Harper & Brothers, and Messrs. White & Sheffield with the parties of the first part or their legal representatives, 1847, which covenant is substantially in the following words: "That they will not without the permission of the parties of the first part or their legal representatives make any further additions to the Octavo edition of the American Dictionary, which shall be inconsistent with its orthography and general principles, or shall increase the size of the same beyond what may arise from the insertion of new words with their definitions, not now found in said American Dictionary;" and the parties of the second part shall have power if necessary, to sue for the enforcement of said covenant. And they further agree, that if through their agency, any restrictions be hereafter imposed on any revision of said Royal Octavo Dictionary, the parties of the second part shall have the benefit of the same with like power to sue for the enforcement thereof.

7. That the parties of the second part may bring all suits which they shall deem necessary for the protection of the copyrights obtained under the renewals, aforesaid, saving only that in cases involving the estate of said Noah Webster, no such suit shall be brought, if the Executors of the estate of Dr. Webster shall within three months after being appraised in writing of the intention of said

parties of the second part to bring a specified suit, object in writing to its being brought. And all papers in the hands of the parties of the first part which are requisite to the prosecution of said suits, shall be duly furnished for the purposes aforesaid.

8. That, during the fourteen years embraced by the renewals aforesaid, the parties of the first part will not make any English Dictionary or Spelling Book which may interfere with the sale of any of the books herein granted to the parties of the second part. 3146

The parties of the second part, then, in consideration of the premises, to hereby covenant and agree with the parties of the first part, as follows:

9. That they will publish the American Dictionary and Spelling Book from the time of the renewal of their respective copyrights; and also the several future Abridgements mentioned above, (reserving the right, however, to delay or wholly omit the publication of the aforesaid Pocket and Intermediate Dictionaries, but without enjoying on that account any deduction from the payments on the score of abridged Dictionaries provided for in the tenth article of this instrument.) 3147

The publication of said Abridgements shall commence from April 14, 1856, unless said time as to the latter shall be extended by an agreement between the parties to this instrument: *Provided*, however, that if it shall appear that F. J. Huntington has a legal right to publish either or all of the three following works (now published by him) after April 14, 1856, viz. the Academic, High School & Primary, then for such length of time as his right to publish such work or works shall extend, said parties of the second part shall not be under obligation to publish the corresponding Abridgment or Abridgments, but the copyright money actually paid by said Huntington on such work or works shall apply toward the payment of the \$5000. referred to in the tenth article of this instrument or of the percentage on the commutation of the same provided for in the 16th article thereof. 3148

10. That they will make payments to the parties of the

Complainant's Exhibits.

first part for the above mentioned rights & privileges on the basis of the following estimate of the *entire* value of each, (Louisa Webster's share in the same, if she lives to renew, being included therein), viz.

(a) Right of publishing the American Dictionary with copyright of revision thereon (if made) Five Thousand five hundred dollars (\$5,500) a year for the term of fourteen years from April 14, 1856.

3150

(b) The privilege of making the revisions and Abridgments aforesaid and of taking out the copyrights thereof, together with the rights and privileges secured by the relinquishments under article (c) in the declarative statement toward the close of this instrument, One thousand dollars (\$1,000) a year, for the same term of fourteen years from April 14, 1856.

(c) Right of publishing the Abridgments aforesaid with copyrights thereon, Five thousand dollars (\$5,000) a year, for the same term of fourteen years from April 14th, 1856.

3151

(d) Right of publishing the Elementary Spelling Book with copyright of revision thereon (if made), or new Speller with copyright thereof, or new and present Spel'er conjoined, Twenty-five hundred dollars (\$2,500) a year, for the term of fourteen years from May 22d, 1857.

3152

And it is hereby agreed, that whatever share the parties of the first part shall, by renewal, obtain in the copyright of the American Dictionary, they shall receive in payment thereof the same share or proportion of the three first mentioned sums (marked a, b, c, and amounting to \$11,500.) during the term of fourteen years from April 14th, 1856; and so also of the share they may obtain in the copyright of the Elementary Spelling Book, and of the last mentioned sum (marked d, being \$2500.) corresponding thereto.

And the parties of the second part do hereby covenant to make said payments in semi-annual installments, during said periods of fourteen years aforesaid, (dating from April 14, 1856 and May 22, 1857 respectively), to

some agent to be appointed by the parties of the first part for the joint and equal benefit of the same in accordance with the arrangement between them already referred to in this instrument.

11. That, if they shall fail to make said payments on the prescribed day, and (notice of said failure being sent them through the Post Office), they shall persist in said failure during four weeks after said day of payment, then the parties of the second part do covenant, that they will submit to and incur a *forfeiture* of all their right to publish the books for which they thus fail to pay; That is to say, if they fail to pay at the rate of \$2,500 a year for the Spelling Book or the new Speller, they shall forfeit the right to publish said Spelling Book, with the copyright of any revision they may have made thereof, and also any new Speller they may have made together with its copyright: If they fail to pay at the rate of \$5,000 a year for the aforesaid Abridgments of the American Dictionary, they shall forfeit the right of publishing all such Abridgments of every kind with the copyrights thereof; if they fail to pay the sum of \$1000. a year for the privilege of making said revisions and Abridgments, or to pay at the rate of \$5,500 a year for the American Dictionary, they shall in either case forfeit the right to publish said Dictionary with the copyright of any revision already made or to be made thereof; and said right to publish, together with all said copyrights, shall from that time forth be the property of the parties of the first part. Provided, however, that if said parties of the second part shall *voluntarily elect* to incur said forfeitures, or either of them, by ceasing to publish said American Dictionary, said Abridgments, and said Spelling Book, or Speller, or either of them, and shall notify said parties of the first part of such election and shall pay up in full all past arrearages due on account of such work or works which have thus ceased to be published by them, they shall make a further payment, in case they cease to publish the American Dictionary, of sixteen thousand five hundred dollars (\$16,-

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Complainant's Exhibits.

500.); in case they cease to publish said Abridgments, they shall pay the further sum of Fifteen thousand dollars (\$15,000.); and in case they cease to publish said Spelling Book or Speller they shall pay the further sum of Seven thousand five hundred dollars (\$7,500.). And when said payment or payments shall have been fully made by the said parties of the second part, they shall be exempt from any further obligations in reference to the work or works thus forfeited.

3158

12. That while they continue to publish said American Dictionary under said renewal (or under the copyright obtained under the revision of 1847, or, under the copyright of the contemplated Revision of said Dictionary, they will not make any material change in the orthography or present plan of said work, unless authorized and sanctioned by a majority of the children of Dr. Webster who are then alive (Louisa Webster not being included therein), or by the President and Professor of Rhetoric (for the time being) in Yale College. Nor will they publish the same in the Octavo form of any size whatever (by Octavo form being understood the form of the present Royal Octavo Abridgment published by Messrs. Harpers) or in any form which shall encroach more than the present one, on the Royal Octavo Abridgment of said American Dictionary.

3159

13. That, while they continue to publish the Abridgments aforesaid, they will publish no Abridgment of the American Dictionary which shall exceed the present Academic printed by Francis J. Huntington in respect to the size of said volume, or which shall contain more than three per cent of *matter* beyond that embraced in said Academic, or in the work corresponding to or substituted for said Academic, to be prepared as provided in this instrument. And the parties of the second part do agree, that if they violate this covenant they will submit to a forfeiture of all their right to publish said Abridgment with the copyright thereon, in case they persist in such violation (notice of the same being sent through the Post Office or otherwise) during the period of three calendar months from the time said notice is given.

3160

Contracts and Assignments.

3161

14. That they will save harmless the parties of the first part, together with William W. Ellsworth and Henry White as Executors or representatives of the estate of said Noah Webster, from a'l expenses that may arise out of any claim of Francis J. Huntington or others touching the publication of any of the Webster Abridged Dictionaries of which he is now publisher; or any of the Abridgments provided for in this instrument, consequent upon any action or neglect of the said G. & C. Merriam their Executors, Administrators or Assigns. And the parties of the second part do covenant to carry on at their own charge, all suits that may arise out of such claims and also all suits which they commence for the protection of the rights obtained by the renewals aforesaid. 3162

15. That in case of their forfeiting the right to publish any of the books aforesaid, under the provisions of this instrument, the parties of the second part, if so required, will within ten days thereafter deliver the metallic plates of said forfeited books to the parties of the first part, and receive for the same what shall be estimated as their fair value by three persons, of whom one shall be chosen by each of the two parties to this instrument and the third by the individuals thus selected. 3163

The parties to this instrument do mutually covenant and agree as follows:

16. That in case the parties of the second part shall find it convenient in arranging with Francis J. Huntington touching his claim to publish any of the Abridgments now published by him as aforesaid (the University edition being always excepted) to unite said Huntington with them as publisher of the aforesaid Abridgments, or the new Abridgments herein provided for, then said parties of the second part, instead of making payment for said Abridgments at the rate of five thousand dollars per annum (\$5,000.) shall have the right to pay for the privilege of publishing each copy of said Abridgments at the rate of eight (8) cents on the Academic; of seven (7) cents on the High School; of four (4) cents on the 3164

3165

Complainant's Exhibits.

new intermediate book; of two and a half ($2\frac{1}{2}$) cents on the Primary; and of two (2) cents on the Pocket Dictionary. And from the time this change shall take place, and this mode of payment shall be adopted, the parties of the second part shall, at the expiration of each period of six months, furnish to the parties of the first part, the printers' certificate of all the copies of said Abridgments printed during said period and shall pay for each of said copies at the rate prescribed above. And if said parties of the second part shall fail to furnish said certificate and duly make the payments aforesaid, at the expiration of each period of six months, they shall incur the forfeitures established in the eleventh article of this instrument, according to the tenor thereof. Provided that said parties of the second part shall have the right at any time to return to the payment of Five thousand dollars (\$5,000) per annum, in lieu of said amounts per copy.

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17. That if for any unforeseen cause, the copyright obtained by renewal on said American Dictionary or on said Spelling Book should at any time fail and become of no effect, then and in that case the parties of the second part shall have the option while they continue to publish the work whose copyright has thus failed, of paying for the right of publishing said Dictionary at the rate of sixty (60) cents a copy in lieu of paying the sum of Five thousand and five hundred dollars (\$5,500.) per annum, therefor, as agreed above; and so for the right of publishing said Spelling Book at the rate of five mills per copy in lieu of paying Twenty five hundred dollars (\$2,500.) therefor as also agreed above. And in this case, the parties of the second part shall return the printers certificate and make their payments according to the above rates, in the way prescribed in the last preceding article, and shall be liable to the same forfeitures in default of payment thereon.

3168

18. That if Louisa Webster should live to take part in the renewals aforesaid, she may be made a party to

this instrument by the signature of her legal Guardian giving his assent to the same.

19. That no assignment of their interest in this contract shall be made by said G. & C. Merriam or their Executors or Administrators without the written consent of a majority of the parties of the first part.

20. That, Whereas this instrument is designed to carry into effect certain contracts between the parties to the same in reference to the publication of the American Dictionary, it is hereby understood and agreed, that in whatever respects the provisions of this instrument supercede or set aside said contracts, the latter shall so far be null and void; but in all other respects, they shall remain in full effect. 3170

21. The parties to this contract do hereby covenant with each other for the faithful performance of the engagements herein contained; and do declare the following to be the true intent of the foregoing instrument, viz.

(a) That the parties of the first part, acting only for themselves severally, and making no engagements whatever in behalf of said Louisa Webster, do contract to give to the parties of the second part all the rights which may be secured to the parties of the first part under the renewals aforesaid, with the privilege thereby vested in them of making the revisions and Abridgments specified above; but without assuming any further *responsibility* or entering into any *guarantees* whatever touching the same. 3171

(b) That the parties of the second part undertake to publish the books mentioned above; subject to the payments or to the forfeitures established in relation to the same, and being also subject to the various stipulations concerning said books and matters relating to the same, enumerated above. 3172

(c) That from and after the expiration of the fourteen Years embraced by said renewals, the parties of the first part do relinquish all further claims on the American Dictionary and Elementary Spelling Book together with all the above-mentioned future Abridgments, and trans-

3173

Complainant's Exhibits.

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fer the same to the said parties of the second part, so far as any pecuniary recompense is concerned; leaving the parties of the second part to enjoy without further payment, all the income which may accrue therefrom; and binding them only, while they continue to publish as hereinbefore agreed, for said fourteen years under the aforesaid renewals or under the copyrights of the Abridgment of 1847, or of the contemplated revision, as well as the copyrights of the Abridgments aforesaid, not to alter the books thus published in such a manner as to encroach on the rights of those who publish the other Abridgments of said American Dictionary or in any manner which may be inconsistent with the orthography or general plan of Dr. Webster, in his American Dictionary and Spelling Book, except as hereinbefore provided.

In testimony whereof, we have hereto set our hands this first day of November 1853.

3175

WM. W. ELLSWORTH
 EMILY W. ELLSWORTH
 CHAUNCEY A. GOODRICH
 JULIA W. GOODRICH
 HENRY JONES
 E. S. W. JONES
 WM. G. WEBSTER
 LOUISA WEBSTER

3176

by Henry White her conservator hereto empowered by resolve of the General Assembly of the State of Connecticut, and in pursuance of the provisions of the foregoing contract she became a party hereunto.

Duplicate copy
 signed Sept. 1855.

"Lippincott Contract of 1858."

J. B. Lippincott & Co. agree to sell and G. & C. Merriam agree to purchase all of said J. B. Lippincott & Co.'s interest in the two Abridgments of Webster's American Dictionary, known as the Royal Octavo and New University, with the stereotype plates of the same, said Lippincott & Co. to assign all their interest in existing contracts with the heirs of Dr. Webster and others, relating to said books, to G. & C. Merriam, who are to assume and fulfill all existing contracts and obligations relative to said books, assumed by said Lippincott & Co. or to enter into equivalent obligations with said Lippincott & Co. it being understood that the rights conveyed are, those of publishing said Octavo, exclusively, up to a period of fourteen years from the date of its last copy-right in June 1857,—by paying the renewers \$1800 per annum and the New University down to the end of the fourteen years aforesaid, i. e. June, 1871,—paying therefor to the family \$1600 per annum, and on this being done, said works, with all matters now in them, to be the exclusive property of said Merriams, and no farther compensation to be made the family therefor—said Merriams to pay said Lippincott & Co. for said transfer and rights fifty thousand dollars, one half in cash, and one half in ten years, without interest. 3178

2. Said Lippincott & Co. to enjoy the exclusive right to publish the said Octavo Abridgment down to June, 1871, aforesaid, paying said Merriams seventy five cents per copy for each copy issued, giving printer's certificate of numbers,—payable \$900 on 1st of January and July each year, and balance 60 days thereafter for what shall have been sold during previous six months,—the copy-right on New University to be thirty five cents per copy, payable to the Merriams \$800 1st Jan'y and July, balance 60 days,—said Merriams reserving the right to have what numbers of New University they desire, if any, for their own sale at ten per cent. above cost. 3179

3. Said Lippincott & Co. to receive what copies of the Unabridged Dictionary they require for their own sales, 3180

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Complainant's Exhibits.

at three dollars and sixty two and a half cents (\$3.62 1/2) per copy, with privilege of manufacturing for themselves instead, deducting from said \$3.62 1/2 the sum said Merriams have to pay for manufacturing the work—said Merriams purchasing their stereotype plates for this purpose, yet without cost to themselves of transportation, or incommoding themselves as to their own manufacture,—J. B. L. & Co. guaranteeing plates from damage,—adjustable on 1st of January and July by note at four months.

3182

4. Said G. & C. Merriam agree to make such revisions and renewals in the plates of the two Dictionaries as may be mutually deemed necessary, stereotyping such revisions and improvements at their own charge.

5. Said Merriams may cancel this arrangement as far as the Quarto Dictionary is concerned, at any time, by giving six months notice, and paying said Lippincott & Co. ten thousand dollars.

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6. If new quarto, from added matter or other causes, should cost more to manufacture than now, said Lippincott & Co. shall pay such added costs on copies they receive.

7. The stereotype plates to be kept constantly insured by said Lippincott & Co. at their own charge, and passed over to said Merriams, when time of arrangement expires.

8. Messrs. Lippincott & Co. to make thorough and earnest effort for the sale of the three Dictionaries embraced in this contract, for the Webster system, and not to become interested in works that would conflict.

3184

9. If Mr. Lippincott ceases to be member of the house, G. & C. Merriam may, if they elect, make the \$10,000 forfeiture \$5000.

Contract not to be assigned or pass to other parties without G. & C. M.'s consent,—vacated if conditions not fulfilled.

J. B. L. & Co.'s net Trade price of quarto to be not less than \$5 as Trade arrangements now are.

J. B. LIPPINCOTT & Co.
G. & C. MERRIAM.

New York }
Sept. 3rd, 1858.)

**Contract and Assignment of the University
and Pocket Dictionaries.**

An agreement entered into this twenty fifth day of April 1844, between William W. Ellsworth and Henry White, as Executors of the late Honb'l Noah Webster, on the one part, and Huntington and Savage of the City of New York on the other part, Witnesseth.

Said executors agree, within a reasonable time, and by a competent person or persons, to prepare for publication, the following works viz, a new abridgement of the American Dictionary of the English Language in Quarto, including the recent additions made to said work in the last edition of the same, in two volumes royal Quarto; which abridgement is to consist chiefly of additions to the larger school dictionary, now published by Huntington and Savage; the vocabulary and definitions of said abridgement are to be more copious and complete than those of the larger of the two school dictionaries now published by the said Huntington and Savage aforesaid. and to contain such other matter appropriate to a good dictionary as the said executors may deem expedient: the whole to form when printed one duodecimo volume (so called) of about 500 pages, but the amount of matter in the same, to be subject to the pleasure of said executors. When this shall have been published (or at any earlier period, if the parties shall so agree,) they engage to prepare or cause to be prepared by a like competent person or persons, a pocket edition of said work, to make a volume of about the size, shape and number of pages of Tegg's London copy of "Johnson's pocket Dictionary of the English Language." And said executors for themselves and their successors engage to provide some suitable and competent person or persons, to read and correct the proof for the present and all future new sets of stereotype plates of said works, and to ensure to the said publishers by such careful preparation of copy, and thorough proof reading, the greatest possible accuracy to the said work, free of charge or expense, of any kind, to the said publishers to his heirs or assigns.

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The said executors for themselves and their successors agree, that they will take all legal necessary and proper measures to secure, so far as it can by law be secured by them in their said capacity, a copyright for the said works aforesaid, for the sole benefit of said estate; and the said Huntington and Savage, their heirs, executors and assigns shall have the sole and exclusive right, so far as said executors, as such, can give the right, of publishing the said Works for the full time and period of twenty eight years from the date of the copyright, and the said exclusive right (so far as said executors can give it) of publication is hereby vested in the said Huntington and Savage, their heirs and assigns accordingly. And for the purpose of securing the said Huntington and Savage their heirs or assigns from the competition or the infringement of said rights and privileges in any manner or form by the issue of works of rival or similar character, or of books intended, fitted or calculated to fill or occupy the same place in public use as the aforesaid volumes said executors for themselves and their successors further agree, that during the said twenty eight years, they as executors afor'sd, will not prepare or cause, license, or give their permission to prepare, any new work or works abridged or compiled from any of the works of the late Noah Webster, which shall be either in form or matter materially and substantially the same books. In consideration whereof the said Huntington and Savage their heirs or assigns do undertake and promise said executors and their representatives, that during the said term of twenty eight years, or during such a portion of the said time as the said executors or their successors can and do secure to the said Huntington and Savage their heirs and assigns the said sole and exclusive right of publication of said works respectively, they will pay the said executors their representatives or assigns Ten cents for each and every copy of the duodecimo and Three and a half cents for each and every copy of the pocket edition of said works while they the said Huntington & Savage or their heirs or assigns shall publish, and that at

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Contracts and Assignments.

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all times they will during said period that the rights of publication and immunities afo'sd shall be secured to them keep the market well and fully supplied with said works.

The copyright money shall be payable as follows viz on the first week in January and July semi-annually, during the af'sd period of twenty eight years, or of such a portion of the same as the said exclusive rights shall be secured to the said Huntington and Savage their heirs and assigns, they the said Huntington & Savage their heirs and assigns do undertake and promise to render to the said executors their representatives or assigns a statement of the respective quantities and date of each edition of each of said books printed by them, their heirs or assigns, during the preceding six months, duly certified by the printer of the same; for each and every copy so certified by the printer, the aforesaid sum per copy respectively shall be paid by the said Huntington & Savage's note payable in six months from the aforesaid semi-annual periods.

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And if said Huntington & Savage or their heirs or assigns shall neglect to present said statement aforesaid on demand, at the periods aforesaid, or shall neglect to execute and pay said notes as aforesaid, this contract shall be null and void at the election of said executors their representatives or assigns.

This contract shall not be held or construed to affect in any way the two contracts already existing between said estate and said Huntington & Savage respecting the two school dictionaries now published by them, nor the right of said executors or whoever is or may be interested in said two dictionaries, but the same and said existing contracts respecting the same shall be and remain as if this present contract had not been made.

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WM. W. ELLSWORTH
HENRY WHITE
HUNTINGTON & SAVAGE.

And if said Huntington & Savage or their assigns, shall

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Complainant's Exhibits.

fail to fulfill their part of this contract, it shall be void at the election of the executors and their assigns. And if said Huntington & Savage or their assigns shall cease to publish said books then this contract shall be void at the like election of the said executors or their assigns.

HUNTINGTON & SAVAGE
WM. W. ELLSWORTH

3198 I, Francis J. Huntington for myself and the firm of Huntington & Savage for value received do hereby sell assign and transfer the foregoing contract and all the advantages to be derived therefrom to G. & C. Merriam.

Witness my hand and seal this 12th day of April 1854.

Sealed and delivered
in the presence of

F. J. HUNTINGTON. (Seal)

W. HUTCHINS.

3199 In consideration of the foregoing assignment and for value received we hereby assume all obligation and duties on the part of the assignors to the executors of Dr. Webster and engage faithfully henceforth to fulfill the same.

Witness

G. & C. MERRIAM.

W. HUTCHINS.

April 12, 1854.

3200 We the executors of the estate of the late Dr. Noah Webster do hereby license and accept said Transfer from said Francis J. Huntington and Huntington & Savage to G. & C. Merriam and release said Francis J. Huntington and Huntington & Savage from any further liabilities upon the same.

W. W. ELLSWORTH
HENRY WHITE

Whereas F. J. Huntington has this day, in behalf of himself & Huntington & Savage made an assignment to us the undersigned, of the University and Pocket Dictionaries and contract therefor, And Whereas we the undersigned have accepted said assignment, and agreed to

fulfill the covenants of said F. J. Huntington & Huntington & Savage touching the same with the Executors of Dr. Webster's Estate, Wm. W. Ellsworth and Henry White, and Whereas the Executors have accepted us as assignees of said Contract, all as hereinbefore expressed, now therefore, in consideration of the premises, and one dollar—received to our satisfaction, we do covenant with said Executors, to keep and fulfill all the duties & obligations which were obligatory upon said Huntington or said Huntington & Savage in virtue of said contract.

3202

G & C MERRIEM,
Springfield, April 12, 1854.

Contract and Assignment of Webster's High School Dictionary.

An agreement between Wm. W. Ellsworth & Henry White, as executors of the late Hon. Noah Webster, on the one part, and Huntington & Savage of the City of New York on the other part; witnesseth:

3203

The executors agree on their part, that within a reasonable time, they will have prepared, by a suitable and competent person (& Wm. G. Webster, Esqr., is expected to be the individual) an improved and corrected copy of the present twelve mo school dictionary, now & for some ten years past, published by said Huntington & Savage. The said copy is to be prepared for a duodecimo volume, as formerly understood, of about three hundred and sixty pages, having a vocabulary of some forty thousand words; to be a pronouncing dictionary—with some other little improvements, such as a more accurate money table, a list of geographical names, &c. at the pleasure of the parties.

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The executors are to employ a competent person to read and correct the proof, for the present and all future sets of plates, so as to ensure a correct book; all which

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Complainant's Exhibits.

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is to be done free of charge to said Huntington & Savage. The executors so far as it can be done by them, in their said capacity, agree to take the usual and proper measures to obtain a copyright of said book, in the office of the clerk of the District Court of the District of Connecticut, for the benefit of the estate of said Webster, & when the same is done, they agree, for a consideration hereinafter named, that said Huntington & Savage, their heirs & assigns may have, for the full term of twenty-eight years from the date of said Copy-right, the full & free use & enjoyment of said copy-right during said time, so far as the executors as such can give them the same; and said right, so far as given as afore-said, is hereby vested in said Huntington & Savage.

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And for the better security of said Huntington & Savage, their heirs and assigns, the said executors agree to refrain from doing any act, as executors of Dr. Webster, which shall impair or injure said right or interest so vested in said Huntington & Savage, their heirs or assigns, and further, that they will themselves, during the continuance of this contract, or will permit said Huntington & Savage their heirs or assigns, at the expense of said estate, to take the necessary and proper legal measures, to guard and preserve said interest so vested, from all illegal depreciations & violations.

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In consideration whereof, the said Huntington & Savage on their part agree, that at their own expense they will stereotype & publish said book, in a duodecimo form as formerly understood, & keep the market supplied with the same during said twenty-eight years, or so long as they shall have the right to publish the same.

And for payment of copy-right, the parties agree to take the number of the present book published since the death of Dr. Webster, and average said number of the present book at the rate per year, since said event to the date of this contract, and upon said annual average number of the said new book, said Huntington & Savage agree to pay in semi-annual payments, as herein-after named,

Contracts and Assignments.

3209

said executors, their successors or assigns, seven cents per copy, and on the number of said new book, and above & beyond said annual average number, to pay five & one-half cents per copy up to one further quarter of said annual average number, & five cents only, on each copy above & beyond said annual average number and the one further quarter of said annual average number, they, or their heirs, or assigns shall publish.

And said Huntington & Savage, their heirs or assigns shall render to said executors, their successors or assigns an account semi-annually, i. e., on the first week of January and July of each year, during the whole time of said copy-right, of the number of books published, during the six months respectively preceding said first weeks in January & July, & shall accompany said semi-annual account always, with the printer's certificate, certifying the time and number of said books by him or them published as aforesaid. 3210

And said Huntington & Savage, shall always with said semi-annual accounts and certificates, send to said executors their successors or assigns, their promissory note for the sum due as aforesaid for said books, at the rates afore-said for the then last six months, which notes shall bear date the first or second day of January and the first or second day of July, each year, respectively, payable in six months from date at some bank in Hartford. And if said book shall cease to be published, or said Huntington & Savage shall fail to keep and perform any and each of the foregoing stipulations on their part, or to pay their said notes as they shall become due, then the said executors their successors or assigns, at their pleasure may terminate this contract thereafter, giving thirty days notice & said payment being still neglected, said executors, their successors or assigns shall have the sole right to publish said book thereafter & shall take the plates for said book at their then value, to be appraised by some indifferent person, if the parties cannot agree to said value. 3211 3212

And it is further agreed by the parties, that if the said

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Complainant's Exhibits.

executors at any future time shall be unable to secure to said Huntington & Savage, their heirs or assigns, and sole & exclusive right to publish said dictionary, then from & after said period, they, the said Huntington & Savage, their heirs or assigns shall be under no obligation to perform any of the acts herein before named, the said contract shall become null & void thereafter.

3214

All copy received from the editor shall be considered and held to be good and satisfactory. The said Huntington & Savage shall make no material alterations in said book without consent of said executors, their successors or assigns. This contract is to have no effect after the 22d day of May, 1857, upon those of Dr. Webster's family who may then be interested, in their own right, in said present twelve mo dictionary, except as to such new copyright matter belonging to said estate of Dr. Webster, or to said executors, as is by virtue of this contract vested in said Huntington & Savage, their heirs or assigns.

3215

In testimony whereof we have hereunto set our names this sixth day of October 1847 at the city of Hartford.

WM. W. ELLSWORTH

HENRY WHITE

HUNTINGTON & SAVAGE

I, Francis J. Huntington for myself and the firm of Huntington & Savage for value received do hereby assign, sell and transfer the foregoing contract and all the advantages be derived therefrom to G. & C. Merriam.

3216

Witness my hand and seal this 12 day of April, A. D. 1854.

F. J. HUNTINGTON (Seal)

Sealed and delivered
in presence of

W. HUTCHINS.

In consideration of the foregoing assignment and for value received we hereby assume all obligations and duties on the part of the Assignors to the Executors of Dr.

Contracts and Assignments.

3217

Webster and engage faithfully henceforth to fulfill the same.

G. & C. MERRIAM.

Witness,
W. HUTCHINS.

APRIL 12, 1854.

We the Executors of the estate of the late Dr. Noah Webster do hereby license and accept said transfer from said Francis J. Huntington and Huntington & Savage to G. & C. Merriam and release said Francis J. Huntington and Huntington and Savage from any further liabilities upon the same. 3218

HENRY WHITE.

Whereas F. J. Huntington has this day, in behalf of himself & Huntington & Savage made an assignment to us the undersigned, of the High School Dictionary, and correct therefor, And Whereas we the undersigned have accepted said assignment, and agreed to fulfill the covenants of said F. J. Huntington & Huntington & Savage touching the same with the Executors of Dr. Webster's Estate Wm. W. Ellsworth & Henry White And whereas the Executors have accepted us as assignees of said contract all as hereinbefore expressed now therefore in consideration of the premises and one dollar received to our satisfaction, we do covenant with said Executors to keep & fulfill all the duties & obligations which were obligatory upon said Huntington or said Huntington & Savage in virtue of said contract. 3219

G. & C. MERRIAM.

Springfield, April 12, 1854. 3220

**Contract and Assignment of Webster's
Academic Dictionary.**

KNOW ALL MEN BY THESE PRESENTS that I, WILLIAM W. ELLSWORTH of Hartford, Connecticut, acting executor of the Estate of Noah Webster, LL.D. deceased, in consider-

3221

Complainant's Exhibits.

3222 ation of one dollar to me in hand paid by Francis J. Huntington of said Hartford, and in consideration of the premises, do hereby, so far as I may do it as executor aforesaid, sell, transfer, and set over as aforesaid unto the said Huntington, his executors, administrators or assigns, all the right and interest of said Estate to publish a certain duodecimo School Dictionary known by the name of the "Academic" recently prepared for said Estate, by William G. Webster, Esq, and published in the year eighteen hundred and fifty, by the late house of Huntington and Savage, for and during the full unexpired term of twenty eight years from the date of the Copyright, which is the sixteenth day of September eighteen hundred and fifty.

3223 The conditions of the above Contract are as follow to wit, The said Huntington his executors, administrators, and assigns, shall in each of the months of January and July in each year, during the continuance of this contract, forward to said Ellsworth said executor, or his legal successor or representative of the said Estate of the said Noah Webster an accurate account of the number of said Books published during the six months severally preceding said months of January and July of each year, together with the printer's certificate of the number so printed, and for each and every number so printed the said Huntington shall pay at the rate of eight cents per copy, and the payment thereof may be made by the said Huntington giving his note for the amount so ascertained to be due, at the respective periods aforesaid, payable to

3224 said executor, his legal successor, or representative aforesaid, at six months from the first or second days of January or July as aforesaid. It is however agreed by the parties that no Copyright need be paid on any copies of said Dictionary given to Teachers, Editors, and others for the purposes of introduction, but such exemption shall terminate at the pleasure of said executor, or his successor upon giving notice. And if said Huntington, his executor, administrator, or assigns, shall for any cause, not continue to publish said Book, or shall make default in any of the particulars aforesaid, or in payment of said

Contracts and Assignments.

3225

notes when due, and said default shall continue thirty days, the said Ellsworth or his legal successor, or representative, may at his election put an end to the continuance of the Contract, and he or his said successor thereafter shall have the exclusive right to publish said Book, and may and shall take the then existing stereotype plates for said Book at an appraised value, to be ascertained by two disinterested and proper persons, each party to choose one, and they to choose a third if they cannot agree. 3226

And said Huntington his executors, administrators, or assigns, so long as he or they shall publish same, shall make suitable and proper efforts to have the said Book brought into use and shall keep the market supplied with the same, and a neglect to do this for six months shall work a forfeiture of this Contract, with the like effect and consequences as is above expressed. Nor shall any alteration in said Book be made without the consent of said Ellsworth or his said successor.

IN WITNESS whereof the parties to these presents have hereunto set their hands and affixed their seals this twenty eighth day of February One Thousand eight hundred and fifty two. 3227

WM. W. ELLSWORTH
Acting Executor on the
estate of Noah Webster,
LL.D.

F. J. HUNTINGTON

Signed sealed and delivered)
by the said Ellsworth in } ELIZABETH ELLSWORTH
the presence of } 3228

Signed sealed and delivered) WM. WILSON
by the said Huntington in }
the presence of } WM. SHORT

I Francis J. Huntington for myself and the firm of Huntington & Savage for value received do hereby sell assign and transfer the foregoing contract and all the advantages to be derived therefrom to G. & C. Merriam.

3229

Complainant's Exhibits.

WITNESS my hand and seal this 12th day of April, 1854.

F. J. HUNTINGTON (seal)

Sealed and delivered
in the presence of

W. HUTCHINS.

3230

In consideration of the foregoing assignment and for value received we hereby assume all obligations and duties on the part of the assignors to the Executors of Dr. Webster and engage faithfully henceforth to fulfill the same.

Witness
W. HUTCHIN.

G. & C. MERRIAM
April 12, 1854.

3231

We the executors of the estate of the late Dr. Noah Webster do hereby license and accept said transfer from said Francis J. Huntington and Huntington and Savage to G. & C. Merriam and release said Francis J. Huntington and Huntington & Savage from any further liabilities upon the same.

HENRY WHITE.

3232

WHEREAS F. J. Huntington has this day, in behalf of himself and Huntington & Savage made an assignment to us the undersigned, of the Academic Dictionary, and contract therefor. And Whereas we the undersigned have accepted said assignment, and agreed to fulfill the covenants of said F. J. Huntington and Huntington & Savage touching the same with the Executors of Dr. Webster's Estate, Wm. W. Ellsworth and Henry White. And Whereas the Executors have accepted us as assignees of said Contract all as hereinbefore expressed, now, therefore in consideration of the premises and one dollar received to our satisfaction we do covenant with said Executors, to keep and fulfill all the duties and obligations which were obligatory upon said Huntington or said Huntington & Savage in virtue of said contract.

G. & C. MERRIAM

Springfield, April 12, 1854.

From copy O. M. B.

Delegation of Power to Executors by Heirs.

Whereas, by the will of the late Noah Webster, Wm. M. Ellsworth and others are named as executors, some of whom, it is expected will accept of said trust, and whereas, it may become important, for our interest in the estate of said Webster, that said executors should be clothed with other and more ample powers, touching the copyrights belonging to said estate, (in order that said executors may enter into necessary contracts in the use, license, or disposition of the same) than belong to them as executors; now therefore we do hereby agree with said executors or such of them as shall accept said trust, that they shall possess & are hereby clothed with full power from us, to enter into any contracts touching the use, licence, sale or disposition of said copyrights or any plates connected with the same, that we ourselves would do, and said persons or those who shall accept said trust, may bargain, grant, sell, & convey, according to their best judgment, with all necessary & proper covenants or provisions on their part, such copyrights & plates, for longer or shorter periods and such licenses in the enjoyment of the same as shall seem best to them and we authorize them, generally, to manage said copyrights & said plates for us & in our behalf in as full & ample a manner as we could do ourselves, ratifying & confirming, on our part, by these presents, whatever shall be done by said persons, in the premises.

June 1, 1843.

W. C. FOWLER

WM. W. ELLSWORTH

C. A. GOODRICH

H. TROWBRIDGE, JR.

WM. G. WEBSTER, reserving any
interest belonging to Webster
Clark of N. York.

HENRY JONES.

(Copy)

3236

3234

3235

**Contracts between Heirs and G. & C. Merriam
as to Abridged Dictionary.**

3238 This indenture between William W. Ellsworth of Hartford, Conn. and Emily W. Ellsworth his wife; Chauncey A. Goodrich of New Haven, Conn.; and Julia W. Goodrich his wife; Henry Jones of Bridgeport, Conn.; and Eliza S. W. Jones his wife, and William G. Webster of New Haven, Conn.; and their Executors, Administrators, and Assigns parties of the first part; and Messrs. G. & C. Merriam and their successors of Springfield, Mass; and their Executors, Administrators and Assigns, parties of the second part, Witnesseth,

3239 That, Whereas the parties to this Instrument have agreed in their contract of Nov. 1st, 1853, that said G. & C. Merriam may (through the agency of persons to be appointed by the parties of the first part) make a revision of Webster's American Dictionary, and certain new Abridgments thereof, provided the parties of the first part shall obtain a renewal of the Copyright of said Dictionary; and that said new Abridgments shall be published by G. & C. Merriam from and after the 14th day of April 1856; and Whereas the parties of the first part in conjunction with Louisa Webster have since endeavored to obtain, and suppose they have obtained all the rights and interests of William C. Fowler and Henry Trowbridge and his wife, from and after the aforesaid 14th day of April 1856 in the matter added by Dr. Webster to said American Dictionary in the year 1840, and
3240 also in the Abridgements of said Dictionary formerly published by Francis J. Huntington; so that if the aforesaid renewals should be obtained, all the property will vest from and after the said 14th day of April 1856 (being the date of said renewal) in the parties of the first part conjointly with Louisa Webster.

Therefore,

I. The parties of the first part each acting for himself individually and for no others, do hereby agree with said G. & C. Merriam as follows, in respect to their carrying

out the provisions of the aforesaid contract of November 1st, 1853, viz.

(a) That said Merriams may employ Chauncey A. Goodrich and William G. Webster to make the Revisions and Abridgments provided for in said contract.

(b) That said Merriams (so far as the parties of the first part have power to authorize the same) may continue to publish the Huntington Abridgements aforesaid, in conjunction with the above mentioned new Abridgements or in their stead, for any such length of time as they may desire after the aforesaid 14th day of April 1856. 3242

(c) That said G. & C. Merriam in making the Revision and new Abridgements aforesaid through said Goodrich and Webster or other persons duly appointed, may without any additional charge, use the matter added by Dr. Webster in his revision of 1840, and also any matter contained in the Huntington Abridgments aforesaid, so far and as long as the parties of the first part have power to authorize the same. 3243

II. The parties of the second part, in receiving the above grants, do hereby covenant that whether they publish the new Abridgements or the Huntington Abridgments, or both conjointly, they will pay for the same at the rate established in the tenth article of the Original Contract of Nov. 1st, 1853. That is to say, five thousand dollars (\$5,000) a year for the term of fourteen years from April 14th 1856, to be paid in semi-annual installments.

III. And Whereas William W. Ellsworth, one of the signers of this instrument, is in conjunction with Henry White, Executor of the will of the late Noah Webster, and has since the death of said Webster, united with said White, in their capacity of Executors as aforesaid, in causing to be made the above mentioned Abridgements formerly published by said F. J. Huntington, it is hereby understood and agreed that said Ellsworth is to be considered as releasing or licensing the use of so much only of the interest or matter of said books as he or his wife hold in their own right individually; and not what he 3244

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Complainant's Exhibits.

holds (if any he does or may hold) as Executor, or in his representative capacity; nor are any of his rights or duties of Executor aforesaid, to be affected by this Instrument. The purpose of which limitation is, to guard and save said Ellsworth and his Assigns against all liability or accountability to any person or persons (if such there are or may be) who have or may have claims on him, or his co-executor for the use and enjoyment of said matter and books as aforesaid—especially as no consideration is paid by said G. & C. Merriam for the license and permission herein before given.

3246

IV. The parties to this Instrument do hereby mutually agree, that Louisa Webster may be made a party to the same, by the signature of her legal Guardian giving his assent thereto.

Dated this 16th day of Feb. 1855.

3247

WM. W. ELLSWORTH
 EMILY W. ELLSWORTH
 W. G. WEBSTER
 JULIA W. GOODRICH
 CHAUNCEY A. GOODRICH
 HENRY JONES
 E. S. W. JONES
 LOUISA WEBSTER

3248

by Henry White her conservator hereto empowered by resolve of the General Assembly of the State of Connecticut, and in pursuance of the provisions of the foregoing contract she becomes a party hereto.

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY, that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam & Co.,

September 23, 1890,

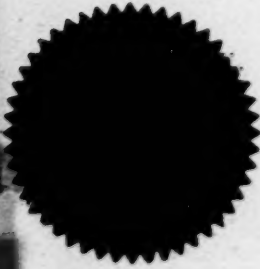
Number 18,449,

for

Dictionaries.

The certificate of registration was granted for the term of thirty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

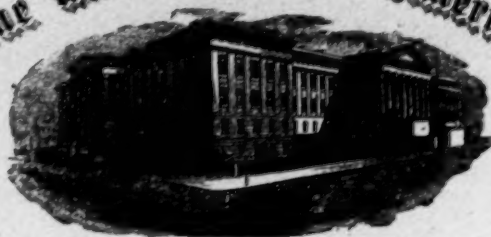
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one-hundred and thirty-sixth.



F. A. Munn
Assistant Commissioner of Patents

No. 18,449

The United States of America.



To all whom it may concern.

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam & Co.,
 of
Springfield, Massachusetts,
 did, on the 15th day of August
1890, deposit in said Office for REGISTRATION fas-similes of a certain

TRADE-MARKfor Dictionaries

and the date of the receipt thereof was duly noted and recorded; that on the 15th day of August, 1890, they deposited therewith a statement, and a written declaration under the oath of Orlando M. Baker, a member of said firm, copies of all of which are hereto annexed; and the said firm having made the payment of a fee of TWENTY-FIVE DOLLARS, and complied with the regulations in such cases prescribed by the COMMISSIONER OF PATENTS, and in all other respects complied with an Act of Congress approved March 3, 1834, entitled "An Act to authorize the Registration of Trade-Marks and protect the same," the said fas-similes, statement, and declaration were duly recorded, and the said **TRADE-MARK** has been duly registered in the said PATENT OFFICE this 23rd day of September, one thousand eight hundred and ~~eighty~~ ninety and protection therefor will remain in force for THIRTY YEARS from said date, unless sooner terminated in accordance with Section 8 of said Act.

In testimony whereof the seal of the Department of the Interior is hereto affixed this twenty-third day of September, 1890, and of the Independence of the United States the one hundred and fiftieth
 Given under my hand at Washington, D.C.

(SEAL)

C. F. Mitchell

(2-6-90)

Commissioner of Patents

815

TRADE-MARK.

G. & C. MERRIAM & CO.
DICTIONARIES.

No. 18,449.

Registered Sept. 23, 1890.



WEBSTER'S
INTERNATIONAL
DICTIONARY

Witnesses

Geo. W. Breen
C. E. Ashley

G. & C. Merriam & Co Proprietors

By their Attorney

Charles A. Judson

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM & CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

STATEMENT and DECLARATION of Trade-Mark No. 18,449, registered September 23, 1890.

Application filed August 18, 1890.

STATEMENT.

To all whom it may concern:

Be it known that we, G. & C. MERRIAM & Co., a firm domiciled and having an office and place of business in the city of Springfield, in the county of Hampden and State of Massachusetts, and composed of HOMER MERRIAM, GEORGE S. MERRIAM, ORLANDO M. BAKER, and H. CURTIS ROWLEY, residing at and citizens of said city of Springfield; BIRDSEYE BLAKEMAN and GEORGE R. CATHCART, residing at and citizens of the city, county, and State of New York; HENRY IVISON and DAVID B. IVISON, residing at and citizens of Rutherford, county of Bergen, and State of New Jersey, and L. HENRY BLAKEMAN, residing at and a citizen of Orange in the county of Essex and State of New Jersey, have adopted for our use a Trade-Mark for books, more especially Dictionaries, of which the following is a full, clear, and exact description.

Our trade-mark consists of an interwoven script cipher composed of the capital letters "N" and "W" partially surrounded by a wreath of flowers, leaves, or the like, the whole surmounting the words "Webster's International Dictionary." These have generally been arranged as shown in the accompanying fac-simile—i. e., in the form of a medallion upon the upper face of which is printed or embossed said interwoven script cipher "N

"W," said cipher being partially surrounded by a wreath of flowers or leaves, beneath which are the letters and words "Webster's International Dictionary," and the whole being placed within a circle, so as to form a medallion, all the other parts of said trade-mark, except the interwoven cipher "N W" and the words "WEBSTER'S INTERNATIONAL," which are essential features, being changeable at pleasure at our option without materially altering the character of our trade-mark.

This trade-mark in its entirety has been used continually in business by us since July 31, 1890.

The class of merchandise to which this trade-mark is appropriated is books, and the particular description of books comprised in such class on which it is used by us is dictionaries.

It has been our practice to stamp or print our said trade-mark on the title-page of the dictionaries and to stamp or emboss the same upon the outside or cover thereof, and also to print the same upon the outside of parcels containing said dictionaries, or to print the same upon tags or labels, which are secured to the goods in any desired manner.

G. & C. MERRIAM & CO.

Witnesses:

CHAS. S. CLEAVES,
A. G. BAKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is a member of the firm the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm at this time has a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to

deceive; that the trade-mark is used by the said firm in commerce between the United States and foreign nations, and particularly with England, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

ORLANDO M. BAKER.

Sworn and subscribed before me, a notary public, this 7th day of August, 1890.

[L. S.]

EDWARD MORRIS,
Notary Public.

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

the G. & C Merriam Company,

March 26, 1895,


Number 26,273,

for

Educational Books.

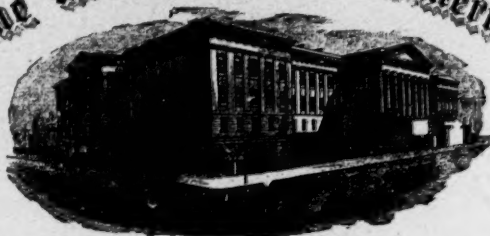
The certificate of registration was granted for the term of thirty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 3rd.
day of April, in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



W. D. Merrill
Assistant Commissioner of Patents.

The United States of America.



To all to whom these presents shall come.

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that, the G. & C Merriam Company, of
Springfield, Massachusetts, a corporation organ-
ized under the laws of the State of Massachusetts
did, on the 21st day of February
1895, deposit in said Office for REGISTRATION fac-similes of a certain

TRADE-MARK

for Educational Books

and the date of the receipt thereof was duly noted and recorded; that on the 21st day of February, 1895, it deposited therewith a statement, and a written declaration under the oath of Orlando M. Baker, an officer of said corporation copies of all of which are hereto annexed; and the said corporation having made the payment of a fee of TWENTY-FIVE DOLLARS, and complied with the regulations in such cases prescribed by the COMMISSIONER OF PATENTS, and in all other respects complied with an Act of Congress approved March 3, 1881, entitled "An Act to authorize the Registration of Trade-Marks and protect the same," the said fac-similes, statement, and declaration were duly recorded, and the said TRADE-MARK has been duly registered in the said PATENT OFFICE this 25th day of March, one thousand eight hundred and ninety-five and protection therefor will remain in force for THIRTY YEARS from said date, unless sooner terminated in accordance with Section 5 of said Act.

In testimony whereof the seal of the Department of the Interior is hereto affixed this twenty-sixth day of March, 1895, and of the Independence of the United States the one hundred and nineteenth
Given under my hand at Washington, D.C.

(SEAL)

John S. Seymour

Commissioner of Patents.

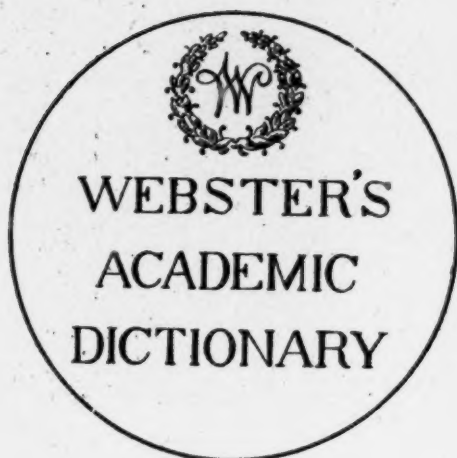
819

TRADE-MARK.

G. & C. MERRIAM COMPANY.
EDUCATIONAL BOOKS.

No. 26,273.

Registered Mar. 26, 1895.



WITNESSES:

Frank S. Ober
A. M. Hayes

PROPRIETOR:

G. & C. Merriam Company
BY
Charles A. Judson
ATTORNEY

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM COMPANY, OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR EDUCATIONAL BOOKS.

STATEMENT and DECLARATION of Trade-Mark No. 26,973, registered March 26, 1895.

Application filed February 21, 1895.

STATEMENT.

To all whom it may concern:

Be it known that the G. & C. MERRIAM COMPANY, a corporation organized under the laws of Massachusetts, and located in the city of Springfield, county of Hampden, and State of Massachusetts, has adopted for its use a Trade-Mark for Books, of which the following is a full, clear, and exact specification.

The said trade-mark consists in a monogram composed of the capital letters "N" and "W" together with the word "Webster's." These have generally been arranged as shown in the accompanying fac-simile; i.e., in the form of a medallion, upon the face of which is printed or embossed said monogram composed of the interwoven script letters "N W" partially surrounded by a wreath of flowers or leaves beneath which is the word "Webster's" together with such other word or words as may indicate the character of the book upon which it is placed, the whole being placed within a circle so as to produce in general effect the medallion-like appearance. These features are all shown in black in the accompanying drawing but any other design or color may be used or the different features may be differently colored or all or part of the non-essential features may be omitted or changed at pleasure and the mark may be used in conjunction with other matter with-

out materially affecting the character of the trade-mark, the essential features of which are the monogram composed of the letters "N" and "W" together with the word "WEBSTER'S."

This trade-mark in its entirety has been used continuously in business by said company since October, 1890.

The class of merchandise to which this trade-mark is appropriated is books and the particular description of books comprised in such class on which it is used by said company is educational books.

It has been the practice of said company to stamp or print its said trade-mark on the title page of the books and to stamp or emboss the same upon the outside or cover thereof, and also to print the same upon the outside of parcels containing said books or to print the same upon tags or labels.

[L. S.] G. & C. MERRIAM CO.,
By O. M. BAKER,
Treasurer.

Approved: HOMER MERRIAM,
President.

Witnesses:
THOS. H. STOCK,
A. G. BAKER.

DECLARATION.

State of Massachusetts, county of Hampden.

SS:

ORLANDO M. BAKER being duly sworn, deposes and says that he is the treasurer of the corporation named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of the trade-mark therein described; that no other person, firm or corporation has a right to such use either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation

in commerce between the United States and foreign nations or Indian tribes and particularly with the Dominion of Canada and the Hawaiian Islands and Great Britain, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

ORLANDO M. BAKER.

Sworn to and subscribed before me, a notary public, this 13th day of February, 1895.

[L. S.] CHARLES S. CLEAVES,
Notary Public.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 1, 1907,


Number 59,187.

for

Dictionaries and Reference-Manuals.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

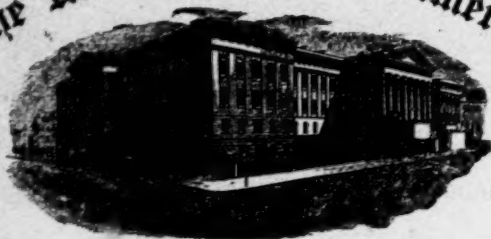
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March, in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



J. A. Duman
Assistant Commissioner of Patents.

No. 59,187

The United States of America,



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 11th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARKfor Dictionaries and Reference-Manuals,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant... is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its SUCCESSORS OR ASSIGNS, in the UNITED STATES PATENT OFFICE, this 1st day of JANUARY, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have hereunto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of JANUARY in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-first.

[SEAL]

F. I. Allen,

Commissioner of Patents.

TRADE-MARK.

REGISTERED JAN. 1, 1907.

No. 59,187.

G. & C. MERRIAM CO.
DICTIONARIES AND REFERENCE MANUALS.
APPLICATION FILED MAY 11, 1906.WEBSTER'S
COUNTINGHOUSE
AND
FAMILY*Proprietor*
G. & C. Merriam Co.
by Hall Heylman
at atty

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,187.

Statement and Declaration.

Registered Jan. 1, 1906.

Application filed May 11, 1906. Serial No. 10,439.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference-manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.

By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,

President.

Witnesses:

BERTON E. HALE,

ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,

ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES.

Notary Public.

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 1, 1907,

Number 59,188,

for

Dictionaries and Reference-Manuals.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

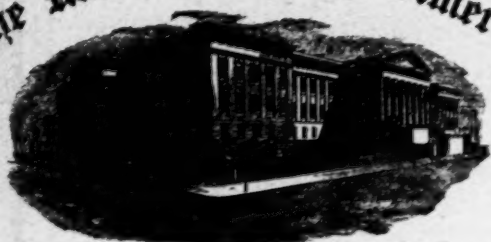
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March, in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



F. J. Merriam
Assistant Commissioner of Patents.

No. 59,188

The United States of America,



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 11th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARKfor Dictionaries and Reference-Manuals,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its successors or assigns, in the UNITED STATES PATENT OFFICE, this 1st day of January, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have hereto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of January, in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-first.

[SEAL.]

F. I. Allen,

Commissioner of Patents.

827

TRADE-MARK.

No. 59,188.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 11, 1906.

WEBSTER'S
ACADEMIC

Proprietor
G. & C. Merriam Co.
by Hall & Heylman
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,168.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 11, 1906. Serial No. 19,430.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM Co., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement, that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or his predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

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Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 1, 1907,


Number 59,189,

for

Dictionaries.

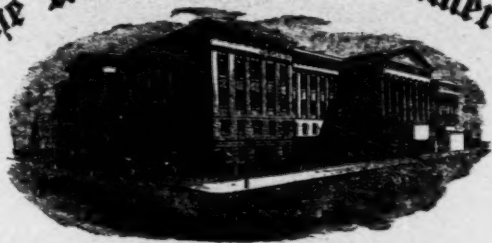
The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March, in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.


John H. ...
Assistant Commissioner of Patents.

No. 59,189

The United States of America,



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 11th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARKfor Dictionaries,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its successors or assigns, in the UNITED STATES PATENT OFFICE, this 1st day of January, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have hereunto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of January in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-first.

[SEAL.]

F. I. Allen,

Commissioner of Patents.

TRADE-MARK.

No. 59,189.

REGISTERED JAN. 1, 1907.

**G. & C. MERRIAM CO.
DICTIONARIES.**

APPLICATION FILED MAY 11, 1906.

**WEBSTER'S
COMMON SCHOOL**

Proprietor
G. & C. Merriam Co.
by H. A. & H. A. Merriam
to copy.

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,189.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 11, 1906. Serial No. 19,432.

STATEMENT.

To all whom it may concern:

Be it known that G & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing

*The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by inprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved

O. M. BAKER.
President.

Witnesses:

BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

2-3804

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 1, 1907,

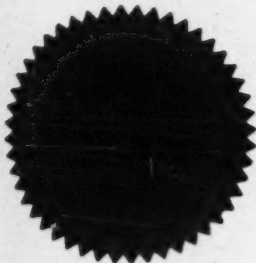
Number 59,130,

for

Dictionaries.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

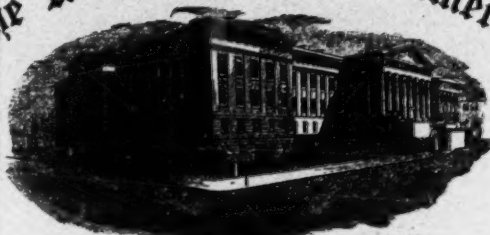
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



F. A. Johnson
Assistant Commissioner of Patents.

No. 59,130

The United States of America.



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 17th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARK

for Dictionaries,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon the examination thereof, it appearing that the said applicant is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its successors or assigns, in the UNITED STATES PATENT OFFICE, this 1st day of January, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have hereto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of January in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-first.

[SEAL.]

F. I. Allen

Commissioner of Patents.

TRADE-MARK.

No. 59,130.

REGISTERED JAN. 1, 1907.

**G. & C. MERRIAM CO.
DICTIONARIES.**

APPLICATION FILED MAY 17, 1906.

**WEBSTER'S
PRIMARY**

Proprietor
G. & C. Merriam Co.
by Hall & Holliman
attys.

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,130.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,818.

STATEMENT.

To all : whom it may concern:

Be it known that G. & C. MERRIAM Co., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,
By H. C. ROWLEY,

Treasurer.

• Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States

of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

837

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 1, 1907,

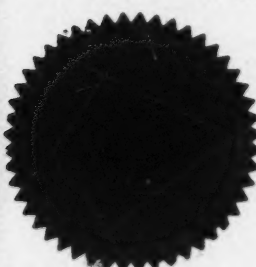
Number 59,191,

for

Dictionaries and Reference-Manuals.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

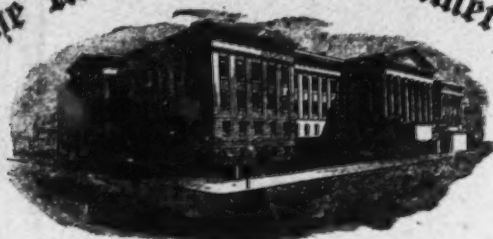
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



F. D. Munn
Assistant Commissioner of Patents.

No. 59,191

The United States of America.



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 17th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARK

for Dictionaries and Reference-Manuals,

that A. duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and he duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of A. said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its successors or assigns, in the UNITED STATES PATENT OFFICE, this 1st day of January, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have herewith set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of January, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

[SEAL-]

F. I. Allen,

Commissioner of Patents.

839

TRADE-MARK.

No. 59,191.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 17, 1906.

· WEBSTER'S
CONDENSED

Proprietor
G. & C. Merriam Co.
by Hall & Ableson
1897

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,191.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,615.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference-manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
RICHARD S. BETTES.

DECLARATION.

State of Massachusetts, county of Hampden, ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States

of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors, from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

registered by

G. & C. Merriam Co.,

January 1, 1907,

Number 59,192,

for

Dictionaries and Reference-Manuals.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

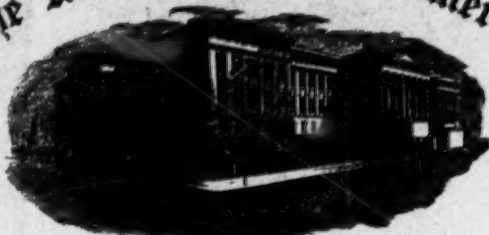
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



W. D. Evans
Assistant Commissioner of Patents.

No. 59,192

The United States of America.



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts,

did, on the 17th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARK

for Dictionaries and Reference-
Manuals,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its successors or assigns, in the UNITED STATES PATENT OFFICE, this 1st day of JANUARY, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have herewith set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of JANUARY in the year of our Lord one thousand nine hundred and SEVEN and of the Independence of the United States the one hundred and thirty-first.

(SEAL.)

F. I. Allen,

Commissioner of Patents.

843

TRADE-MARK.

o. 59,192.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 17, 1904.

WEBSTER'S
PRACTICAL

Proprietor
G. & C. Merriam Co.
by Hall & Appleman
10 City

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,192.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,616.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which said mark is used is dictionaries and reference-

manuals or combined dictionary and reference-manuals.

The trade-mark is usually displayed upon the goods by printing or impressing the same directly upon the books and upon the packages in which the books are arranged.

[L. s.] G. & C. MERRIAM CO.,

By H. C. ROWLEY,
Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
RICHARD S. BETTES.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

2-394

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 1, 1907,

Number 59,193,

for

Dictionaries.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

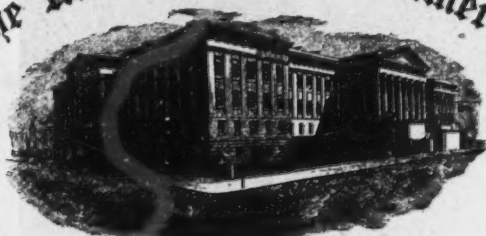
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March, in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



F. J. D. [Signature]
Assistant Commissioner of Patents.

No. 59,193

The United States of America,



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 17th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARKfor Dictionaries,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its successors or assigns, in the UNITED STATES PATENT OFFICE, this 1st day of January, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have hereunto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this first day of January in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-first.

[SEAL.]

F. I. Allen,

Commissioner of Patents.

TRADE-MARK.

No. 59,193.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.
DICTIONARIES.

APPLICATION FILED MAY 17, 1906.

WEBSTER'S
HIGH SCHOOL

Proprietor
G. & C. Merriam Co.
by John A. Stephens
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,193.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,817.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.
[L. s.] CHAS. S. CLEAVES,
Notary Public.

2-304

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the
Records of this office of the Certificate of
Registration, Statement, Declaration and Drawing, in the
matter of the

Trade-Mark

Registered by

G. & C. Merriam Co.,

January 8, 1907,


Number 59,473,

for

Dictionaries.

The certificate of registration was granted for the term of twenty
years, and so far as is disclosed by the records of this office, said certificate
is still in full force and effect.

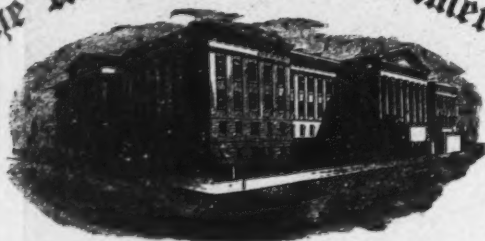
IN TESTIMONY WHEREOF I have hereunto set my
hand and caused the seal of the Patent Office to be
affixed at the City of Washington this 26th
day of March in the year of our Lord
one thousand nine hundred and twelve and
of the Independence of the United States of America
the one hundred and thirty-sixth.



F. A. M.
Assistant Commissioner of Patents.

No. 59, 473.

The United States of America



To all to whom these presents shall come:

This is to Certify That by the records of the UNITED STATES PATENT OFFICE it appears that G. & C. Merriam Co., of Springfield, Massachusetts, a corporation organized under the laws of the State of Massachusetts, did, on the 11th day of May, 1906, duly file in said Office an application for REGISTRATION of a certain

TRADE-MARK

for Dictionaries,

that it duly filed therewith a drawing of the said TRADE-MARK, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the requirements of the law in each case made and provided, and with the regulations prescribed by the COMMISSIONER OF PATENTS.

And, upon due examination thereof, it appearing that the said applicant... is entitled to registration of its said TRADE-MARK under the law, the said TRADE-MARK has been duly registered to G. & C. Merriam Co., and its SUCCESSORS OR assigns, in the UNITED STATES PATENT OFFICE, this 8th day of January, 1907.

This certificate shall remain in force for TWENTY YEARS, unless sooner terminated by law.

In testimony whereof I have hereto set my hand and caused the seal of the PATENT OFFICE to be affixed, at the city of Washington, this eighth day of January in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-first.

[SEAL.]

F. J. Allen,

Commissioner of Patents.

851

No. 59,473.

TRADE-MARK.

REGISTERED JAN. 8, 1907.

G. & C. MERRIAM CO.
DICTIONARIES.

APPLICATION FILED MAY 11, 1906.

WEBSTER'S
NATIONAL PICTORIAL

Proprietor
G. & C. Merriam Co.
by Hall & Heylman
its attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,473.

Statement and Declaration.

Registered Jan. 8, 1907.

Application filed May 11, 1906. Serial No. 19,431.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,

ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,
Notary Public.

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS
CHARLESTON

JUDGES

IRA E. ROBINSON PRESIDENT
HENRY BRANNON
GEORGE POFFENBARGER
WILLIAM H. MILLER
L. JUDSON WILLIAMS
WM. B. MATHEWS, CLERK

March 14, 1911.

G. & C. Merriam Co.,
Springfield, Mass.

Gentlemen:

For many years the members of this court have relied on Webster's as authority on the meaning of words. We are now using Webster's New International constantly. It is superb in clearness and completeness. Its definitions of legal words are particularly copious and accurate.

Respectfully,

L. Judson Williams
Henry Brannon
Geo. Poffenbarger
W. H. Miller
Ira E. Robinson

THE SUPREME COURT OF MINNESOTA
ST. PAUL

M. STANT, CHIEF JUSTICE
BROWN
LEWIS
JAGGARD
OBRIEN
ASSOCIATE JUSTICES

St. Paul, Minn.,

Nov. 21, 1910.

G. & C. Merriam Co.,

Springfield, Mass.

Gentlemen:-

Webster's Dictionary for many years has been used and relied upon with confidence by our court in cases involving the exact meaning of words, especially legal terms. An examination of your New International Dictionary leads me to the conclusion that it is the acme of excellency and utility.

Respectfully yours,

Charles H. Stark

Chief Justice of the Supreme
Court of Minnesota.

We fully concur in the opinions of the chief justice.

Calvin L. Brown
Chas. L. Lewis
John J. Jaggard
Thomas A. O'Brien
Associate Justices

JUDGES:

A. HUNTER BOYD CHIEF JUDGE
 JOHN P. BRISCOE ASSOCIATE JUDGE
 JAMES A. PEARCE "
 SAMUEL D. SCHMUCKER "
 N. CHARLES BURKE "
 WM. H. THOMAS "
 HAMMOND URNER. "
 JOHN R. PATTISON. "

C. C. MAGRUDER,
 CLERK

State of Maryland

COURT OF APPEALS

Annapolis, December 7th 1910

The G. & C. Merriam Co.

Gentlemen.

The Webster Dictionaries have long been regarded by the members of this Court as essential in their work. It was therefore gratifying to us to know that a new edition was to be issued, as many words have come into use during the last decade which were not known at the beginning of that period.

Webster's New International Dictionary is so complete accurate and thorough that we believe it will meet every demand of those in need of an up to date dictionary. We cannot well speak in higher praise of it than to say, as we unhesitatingly do, that it is even better than its immediate predecessor.

Very truly yours,

A. Hunter Boyd
 John P. Briscoe
 James A. Pearce
 Samuel D. Schmucker
 N. Charles Burke
 Wm. H. Thomas
 Hammond Urner
 John R. Pattison

SUPREME COURT OF INDIANA

W. H. JORDAN
 J. A. MONTGOMERY
 W. H. MADLEY
 J. H. MONKS
 J. A. MYERS

1ST DIST.
 2ND DIST.
 3RD DIST.
 4TH DIST.
 5TH DIST.

MARTINSVILLE.
 SEYMOUR.
 INDIANAPOLIS.
 WINCHESTER.
 LOGANSPORT.

INDIANAPOLIS

December 14, 1910.

Webster's Dictionaries have always been recognized and relied on as standard authority. They have been characterized by precision and clearness of definition, and are constantly at hand in the Consultation room and in the Chambers of the Justices. The late edition, or New International, contains a departure from the ordinary lexicon making, at once novel and to the student invaluable, in the divided page in the latter portion of which rare or obsolete, derivative and scientific words, abbreviations and foreign phrases are found separated from the text words proper. It is all that can be desired, or at least all that can be suggested in lexicon making, and its publishers are to be congratulated upon this great work, and the excellence of its execution.

Quincy A. Myers

Chief Justice.

W. H. Jordan

Associate

J. A. Montgomery

Justices.

W. H. Madley

J. H. Monks

facsimil

STATE OF IOWA.
SUPREME COURT.
DES MOINES, IOWA.

857

HORACE E. DEEMER, RED OAK
SCOTT M. LADD, SHELDON
JOHN C. SHERWIN, MASON CITY
EMLIN MCCLAIN, IOWA CITY
SILAS M. WEAVER, IOWA FALLS
WILLIAM D. EVANS, HAMPTON
JUDGES.

CONSULTATION ROOM.

The leading place which for more than a half century Webster's Dictionary has held among works of its kind, is confirmed and reassured by the unquestioned excellence of its latest edition. The New International is a complete Dictionary, compiled and presented in a manner which leaves nothing to be desired in the way of availability or convenience. Its crowning merit is in the comprehensive scope of its usefulness. No man who speaks or writes the English language is so learned or so unlearned that he may not derive profit from its use. It is the handy reference book of all our people when met with any question as to the derivation, history, meaning, orthography or pronunciation of words of their mother tongue. We have constantly recurring occasion for its aid in our consultation room and find it in every way satisfactory. Indeed we consider it an indispensable part of our library.

Very truly yours,

S. M. Ladd
Emlin McClain
W. D. Evans
Scott M. Ladd
John C. Sherwin
H. E. Deemer

simile

Supreme Court Chambers
STATE OF COLORADO
Denver

CAMPBELL
Chief Justice .

February 18, 1911.

G. & C. Merriam Company,
Springfield, Mass.

Gentlemen:-

From the organization of the Supreme Court of Colorado Webster's Dictionary, in some of its various editions, has been in the Supreme Court library and in the chambers of the judges. The members of the court have, during these years, constantly and almost daily had occasion to resort to this invaluable dictionary in the preparation of their opinions. It has been found a most useful and valuable work and is especially full, complete and accurate in its legal definitions. The new edition, Webster's New International Dictionary, bears every evidence of the exhaustive research, skill and care which have characterized the previous editions. No one volume edition of any dictionary is superior, and it is doubtful if any is equal, to Webster. It is worthy of a place in all libraries, public and private, and practically indispensable to every one who wishes to use with accuracy and discrimination the English language.

Respectfully,

John Campbell
Chief Justice,

William H. Gabbard

A. Harrison White

William A. Hill

James E. Garriques
Morton S. Bailey
Associate Justices

The Supreme Court of Texas
Austin.

January 1, 1911.

E. & C. Merriam Company,

Springfield, Mass.

Gentlemen:

Our Supreme Court has used "Webster's Dictionary" in its official work for many years, regarding it as the best authority on all questions within its scope. We have your latest edition which marks a decided advance in the making of dictionaries, the excellence of former editions being preserved and new and valuable features added.

Respectfully,

R. R. Harris Chf Justice
J. J. Brown
J. A. Williams



GAVON D. BURGESS,
CHIEF JUSTICE
JACOB DALLEN,
CLERK

DIVISION NO 1
HENRY LAMM, D.J.
LEROY B. VALLIANT, J.
A.M. WOODSON, J.
W.W. GRAVES, J.

STATE OF MISSOURI,

SUPREME COURT

DIVISION NO 2
JAMES B. GANTT, D.J.
GAVON D. BURGESS, J.
JOHN KENNISH, J.

JEFFERSON CITY

December 1, 1910.

C. Merriam Company
Springfield,
Mass.

Gentlemen:

We regard Webster's New International Dictionary as a truly great work. For comprehensiveness, exactness, lucidity and scholarship it is superior to its predecessors. The division of the page into sections, the upper containing the words in general use, and the lower incorporating foreign phrases, proverbs, obsolete terms, etc., is a novel and excellent arrangement for facilitating consultation. By this means every word and term, domestic or foreign, common or uncommon, is at hand and easy of access.

Special attention seems to have been paid to the treatment of law words, the definitions of which, so far as we have consulted them, are accurate and authoritative. Webster has long been a ready and reliable authority to the bench in cases involving the interpretation of words, and the scope and completeness of the present work render it correspondingly useful and valuable.

Respectfully,

G. D. Burgess C.J.
Leroy B Valliant
A.M. Woodson,
James B Gantt
Henry Lamm
John Kennish.
W. W. Graves

November 14th, 1910

C. Merriam Company,
 Springfield, Mass.

Gentlemen:-

In no field of human effort is the exactly apt use of words imperative and more vital than in the statement of fact and law. Words of dernier resort. Juridical pronouncement is worse than if loose, inaccurate terms are employed in its statement. With rare exceptions law-writers cannot be safely, solely, self-reliant in supplying and selection of terms to express the Law. They must, and must of necessity, consult the result of the work of the specialists in Language, and from that authority at least supplement even, in rare cases, great information in that sphere.

To Webster's earlier Dictionaries may be traced the casting of needless judicial conclusions, especially in the performance of the very important duty of construing or interpreting constitutions, laws, and contracts inter partes.

Webster's New International Dictionary, just issued, not only possesses all the virtues and values of the parent editions, but also: readily accessible a vast deal of new matter not contained in earlier editions, notably in the field of encyclopaedic information; includes words of newer coinage; and embraces a wider range of discrimination in the citation of synonyms of words defined. New work is excellent, and we commend it unqualifiedly.

Yours very truly,

J. R. Dondell, Chief Justice
 B. J. Simpson
 J. W. Anderson
 H. C. W. Gillilan
 J. Mayfield
 A. D. Day
 R. A. Evans.

SUPREME COURT OF ERRORS,
HARTFORD, CONNECTICUT

Dec 16 1910

J. C. Merriam Esq
Springfield, Mass.

Dear Sir:-

We find your New International
the same invaluable book that the
Nabster dictionaries have always
been.

Frederic B. Hall
Chief Justice of Supreme
Court of Errors of Connecticut
Samuel O. Proutie.
John M. Thayer
Alberto J. Raraback.
George W. Wheeler
Associate Justices-

STATE OF MAINE
Supreme Judicial Court
Ellsworth.

Webster's New International Dictionary maintains the reputation which its predecessors enjoyed for superiority in excellence of its definitions. It is a distinct improvement on its immediate predecessor and in our opinion is the best dictionary in existence for the man of affairs as well as the professional man to have upon his desk for practical daily use. It makes special appeal to the lawyer and the law student on account of its concise and yet full and accurate definitions of legal terms and phrases.

Augusta, Maine. December 8, 1910.

Wm P Whitehouse
H M Spear
Lester C Cornish
F E Bond
Amos W King
Henry D. Peabody
A R. Savage

of Washington
Supreme Court
REINHART, CLERK

FRANK M. RUDKIN, CHIEF JUSTICE
JUDGES
R. O. DUNBAR MARK A. FULLERTON
S. J. CHADWICK HERMAN D. CROW
GEORGE E. MORRIS EMMETT H. PARKER

Olympia, Washington, Nov. 26, 1910. 19—

G. & C. Merriam Company,
Springfield, Mass.

Dear Sirs:—

We have had occasion to examine Webster's New International Dictionary recently published by you. We are pleased to say that we regard it as the best Dictionary of our language ever published. The vast amount of information contained in the volume besides that which, strictly speaking, belongs in a Dictionary is a feature of great help in acquiring correct use of words. We believe it safe to assert that no other single volume ever published contains as much useful information as Webster's New International Dictionary. It will continue, as its predecessors have been, an authoritative guide in our work.

Respectfully,

Frank H. Rudkin

Herman D. Crow

S. J. Chadwick
G. E. Morris

Wallace Mount.

Emmett H. Parker

M. F. Crow
R. O. Dunbar

Mark A. Fullerton

simile



COURT OF APPEALS OF KENTUCKY
FRANKFORT.

February 16, 1911.

Dear Sirs.

We used the former edition of your "Webster's International", and found it a safe and sure refuge in every time of need. We have examined the new edition and find the work brought down to date. Much is added to the value of the book in the new edition. It is the court's usual reference book on definition, and we find it of great value to us in our work.

J. P. Hobson, Chief Justice
John W. Carroll
John M. Lasswell
T. J. Nunn
H. C. O'Hear
W. E. Settle
Shackelford Miller

Justices

G. & C. Merriam Co.
Springfield Mass.

Supreme Court
of the
State of Delaware.

Charles M. Curtis,
Chancellor
James Pennewill,
Chief Justice

H. Boyce,
C. Conrad,
B. Woodley,
C. Hastings,
Associate
Judges

G. & C. Merriam Company,
Springfield, Mass.

Gentlemen:-

Your company is entitled to congratulations on the completion of Webster's New International Dictionary. When compared with the first dictionary published by you in 1843, the progress shown is remarkable, but to the ordinary person who uses a dictionary from time to time it is almost incredible that your New International shows such wonderful advance over the "Unabridged" of 1900.

You are in every sense keeping step with this progressive age, your recent publication goes beyond the dictionary standard and is encyclopedic in its scope and nature and cannot but be of the greatest use and value to those engaged in literary and scientific work, and indispensable to the members of the bench and bar. The International will necessarily be in constant demand by those who expound or decide the law.

Yours very truly,

Charles M. Curtis
Chancellor
James Pennewill C.J.
H. Boyce
C. Conrad
B. Woodley
C. Hastings

Dover, Delaware,
November 18, 1910..

State of North Dakota
SUPREME COURT.

Bismarck, N. D. Dec. 7, 1910.

& C. Merriam Company,
Springfield, Mass.

Gentlemen:--

For many years Webster's International Dictionary
has been the standard in this court. After examination and use of
WEBSTER'S NEW INTERNATIONAL DICTIONARY we are prepared to say that
it will more than take the place of the old International.

Aside from being authority on all matters on which a dictionary
is ordinarily consulted, the value of the work to the legal profess-
ion is greatly increased by the most comprehensive and accurate system
of legal definitions which it contains. This volume will be inval-
uable alike in every private and public law library.

D. E. Morgan Chief Justice.
B. H. Spalding,
C. J. Fish
J. C. Larmyer Judges.
H. E. Ellsworth

Jan. 14, 1911.

. & C. Merriam Co.,

Springfield, Mass.

Gentlemen:-

Your New Webster's International Dictionary has been used by us constantly since its publication. The definitions of legal terms and phrases we find to be remarkable for their completeness, accuracy and conciseness. No matter more valuable to the legal profession and courts, could be compressed into the same space. Both in scope and method, the entire work seems to us a distinct improvement over its predecessors, valuable as they always have been among works of their kind.

Very respectfully yours,

E. G. Smith
Chas. S. Whiting
W. Corson
J. M. Co.
Rich. H. H. H.
Judges.

State of Florida
Supreme Court
Tallahassee

January 9 1911

the G. & C. Merriam Co.,

Springfield, Mass.

Gentlemen:-

We have examined your Webster's New International Dictionary and find it to be a great improvement upon its predecessors. In our judicial work we have frequent occasion to refer to it, particularly for different shades of meaning between synonyms, and we always consult it with confidence that the information sought for will be authoritatively correct. We regard it, by long odds, the best dictionary available.

Respectfully yours,

J. B. Whitfield
R. F. Taylor
J. M. Shackelford
R. S. Cochrane
C. B. Parkhill

W. A. Rucker

amazing every subject that
people can have a place
in such a book, and the fullness
and accuracy of its definition
will almost certainly give
it precedence over all others
among those for whom who
want a single dictionary
for every kind of uses

Marcus P. K. Norton
Chief Justice of the Supreme Judicial Court

COMMONWEALTH OF MASSACHUSETTS.
SUPREME JUDICIAL COURT.
COURT HOUSE, BOSTON.

Oct 13 1910

To the Hon. Mr. Justice
For nearly twenty
years I have used Webster's
International Dictionary in
writing legal opinions and
for general reference, and
have found that it satis-
fied my requirements
better than any other book
of its class.

The New International
Dictionary, just published,
is a thorough reconstruc-
tion and enlargement of
the former work, and a great
improvement upon it. Its
breadth and variety of materials,

871
Trenton N. J. January 20th 1911
Supreme Court Chambers.

G. & C. Merriam Co.

Springfield, Mass.

Gentlemen:

Referring to an earlier edition of your dictionary, the then members of this Court said: "Constant reliance upon Webster's International Dictionary for the exact meaning and precise definition of English words has proved eminently satisfactory to us". The authoritative character thus attributed by our predecessors to the earlier edition is unhesitatingly accorded by us to your new and improved edition, enriched as it is by comprehensive definitions of technical legal terminology.

Wm. S. Gummere
Chief Justice

Cl. Garrison
Francis J. Swayze
A. S. Reed
Thomas W. Treichard

Charles W. Parker

J. Bergen

J. P. Voorhes

Miss Minnow

Associate
Justices.

Helena, Montana, November 19, 1910.

The members of the Supreme Court of Montana have each been furnished, for many years last past, with a copy of Webster's International Dictionary. It has been considered by them as the best work of the kind in the English language. The New International of 1910 is now at hand. The ~~work~~ work has been greatly enlarged and improved. As an aid to literary and professional men it is indispensable. It is often cited by us, as an inspection of the reports of the court will disclose, and always with confidence in its absolute correctness.

Theo. Crantly

Chief Justice.

Henry B. Smith

Associate Justice.

Wm. H. Hareway

Associate Justice.

873

Supreme Court
OF MICHIGAN

Lansing, November 18, 1910.

G. & C. Merriam Company, Publishers,
Springfield, Massachusetts.

Gentlemen:-

The 1910 edition of Webster's New International Dictionary marks an advance even upon its excellent predecessor. We find it a valuable reference library in itself, and are pleased with it.

Yours truly,

Flavins L. Brooke
Aaron V. Albee
John W. Stone
Frank A. Barker
Justices of
Supreme Court

The other Justices will write individual letters.

874
The Supreme Court

Providence

December 22, 1910.

Messrs. G. & C. Merriam Company.

Gentlemen:

Since our predecessors expressed their unqualified approval of Webster's International Dictionary the membership of the Court has undergone a complete change, but there has been no change of opinion concerning the merits of the dictionary which we have continued to use until the recent arrival of its successor. Our examination of Webster's New International Dictionary has been sufficient to convince us not only of its continued reliability but also of the convenience and completeness of its modern improvements which leave little or nothing to be desired.

Edward Church Dubois, Chief Justice.
Charles H. Johnson
C. Frank Fichtelberg.
William H. Swettland

Associate Justices

The State of Wisconsin
Supreme Court Chambers
Madison

November 15, 1910.

Messrs. G. & C. Merriam. *C*

Springfield, Massachusetts.

Gentlemen:

We have always kept Webster's International Dictionary on the table in our consultation room and it is constantly referred to. We shall doubtless do the same with the new International, which not only presents new and desirable features but covers the latest advances in human knowledge.

To my mind it is the ideal single-volume dictionary.

Very truly yours,

Chas B Winslow
CJ

876
The State of Wisconsin

Supreme Court Chambers

Madison

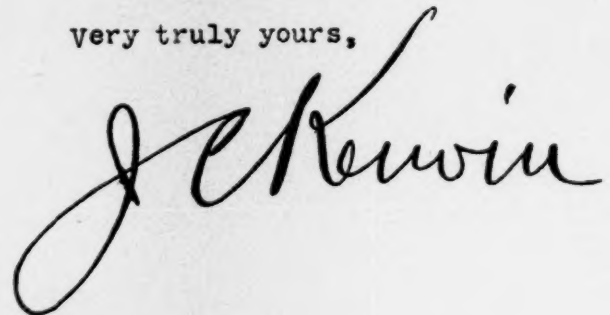
March 27, 1911.

G. & C. Merriam Company,

Springfield, Mass.

Gentlemen:-- The complimentary copy of Webster's new International Dictionary received, for which I thank you. Have already had occasion to refer to it many times finding all definitions most complete and comprehensible. It occupies a prominent position in my library as I consider it indispensable.

Very truly yours,



The State of Wisconsin

Supreme Court Chambers

Madison

Nov. 7, 1910.

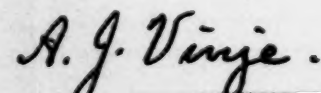
G. & C. Merriam Co.,

Springfield, Mass.

My dear Sirs:-

Since Webster's International Dictionary was published I have constantly used it both in my home and office-- before that the Unabridged. For the last two months I have used the New International. In my opinion it has reached a degree of excellence that will make it the standard for another generation. I know of no better dictionary for every day use.

Respectfully,



FACSIMILE.

The State of Wisconsin
Supreme Court Chambers

Madison

Apr. 6, 1911

Messrs. G. C. Merriam Co.

Springfield, Mass.

Gentlemen,

By statute in this state, section 343 R. S. of 1898, Webster's International Dictionary is made authority on all questions of orthography, thus adding to its intrinsic value legislative recognition. On all debatable questions in this field, therefore, all other works of this kind must yield to Webster's International in Wisconsin in case of conflict. Aside from this we recognize the exalted merits of the work and use it in preference to other dictionaries.

Yours truly,

W. H. Timlin.

The Supreme Court of Wyoming
Cheyenne

CHARLES N. POTTER, Chief Justice
LEWIS BEARD, } JUSTICES
RICHARD H. SCOTT, }
WILLIAM H. KELLY, Clerk

Cheyenne, Wyo., Dec. 21, 1910.

Messrs. G. & C. Merriam Co.,
Springfield, Mass.

Dear Sirs:-

For some time we have been using Websters New International Dictionary and have examined it with considerable care. The new work is a great improvement upon the excellent edition of 1900, and contains much new matter, made necessary by the changes in and additions to our language since the former edition was published. It appears to have been carefully and ably edited, the mechanical work is excellent and the volume is handsomely and substantially bound, making it a most convenient and complete Dictionary for use in the office, countingroom, school or home; and as such we take pleasure in recommending it.

Charles N. Potter
Lewis Beard
Richard H. Scott

Justices.

The Supreme Court of Kansas.

Topeka.

DELBERT A. VALENTINE, CLERK.
LLEWELLYN J. GRAHAM, REPORTER.

Nov. 17, 1910.

An examination of Webster's New International Dictionary discloses that it is an enlarged and greatly improved edition of the earlier International. A feature of the work which lawyers will appreciate is that definitions of words of legal usage are accurate and conform with judicial interpretation as found in the latest decisions of the highest courts of the country. The New International may well be regarded as the standard of authority upon all questions upon which a dictionary is consulted. It is indispensable to anyone who wishes to speak or write the English language correctly. We use it and cite it continually.

W. A. Johnston
H. F. Mason
Clark A. Smith
Sess Porter
Chas B Graves
Alfred W. Benson

SUPREME COURT OF ILLINOIS.

Webster's New International Dictionary retains all of the excellence of the previous edition and has added new features which make it a comprehensive, up-to-date dictionary of the English language. We regard it as a standard of excellence, both as to the orthography and definitions of all words in our language.

Signed,

Abner H. Vickers. Chief Justice.

James H. Cartwright
John S. Hand Justices.

William M. Farmer

Arvin H. Carter

Frank H. Dunn

Geo. H. Coate

Springfield Ill.

October 24" 1910.

STATE OF VIRGINIA
SUPREME COURT OF APPEALS
RICHMOND

JAMES KEITH, PRESIDENT
HARD H. CARDWELL
JOHN A. BUCHANAN
GEORGE M. HARRISON
STAFFORD G. WHITTLE

January 10, 1911.

Until the appearance of the most recent edition of Webster's New International Dictionary (1911), we had deemed it well-nigh impossible to improve upon that which preceded it. We find, however, that intelligent and conscientious effort has added greatly to its usefulness, not only with respect to its encyclopaedic features, but as a dictionary of the language for the great body of the community, and especially for those engaged in literary, scientific and professional pursuits.

James Keith
R. H. Cardwell
John A. Buchanan
George M. Harrison
Stafford G. Whittle



SUPREME COURT OF PENNSYLVANIA
JUDGES' CHAMBERS.

HON. D. NEWLIN FELL, CHIEF JUSTICE.
HON. J. HAY BROWN, JUSTICE.
HON. S. LESLIE MESTREZAT, JUSTICE.
HON. WILLIAM R. POTTER, JUSTICE.
HON. JOHN R. ELKIN, JUSTICE.
HON. JOHN STEWART, JUSTICE.
HON. ROBERT VON MOSCHISKER, JUSTICE.

Philadelphia, April 25, 1911.

The definition of legal terms in Webster's New International Dictionary, in fullness and accuracy, is a feature which greatly commends the work to our approval and acceptance. The fact that the work is so widely employed to meet educational, professional and business demands sufficiently attests its general excellence. Our reference to its definition of legal terms is only because this particular feature has received from us special examination and consideration. As a whole, it is a compendium that embraces everything desired in a dictionary, while in point of accuracy it has no superior.

G. & C. Merriam Company,
Springfield, Mass.

D. Newlin Fell.
J. Hay Brown.
S. Leslie Mestrezat.
William R. Potter.
John R. Elkin.
John Stewart.
Robert von Moschisker.

WALTER CLARK, Chief Justice.
JOSEPH D. WALKER
ROSE H. BROWN, Jr.
LIAM A. HOKE
JESSE S. MANNING
Associate Justices

State of North Carolina
Supreme Court
Raleigh

November 21st, 1910.

G. & C. Merriam Company,
Springfield, Mass.

Dear Sirs:

We take pleasure in stating that we deem Webster's International Dictionary as high authority. It has often been referred to by this Court, and no other work has been so much relied upon for correct definitions and other reliable information. It is a valuable book in all of its departments.

We have no hesitation in recommending it as a standard dictionary.

Walter Clark

Chief Justice

J. D. Walker

Rose H. Brown

Liam A. Hoke

Jesse S. Manning

Associate Justices.

State of Idaho
Supreme Court

BOISE

March 4, 1911.

Geo. H. Stewart, Chief Justice
James F. Ailshie, Justice
Isaac N. Sullivan, Justice

Messrs. G. & C. Merriam Company,
Springfield, Mass.

Gentlemen;-

We have been using and have examined with some care Webster's New International Dictionary, recently published by you, and it affords us pleasure to say that the definitions of legal terms, and, in fact, of all words and phrases, are remarkable for their accuracy, completeness and conciseness. The entire work is a distinct improvement over its excellent predecessors.

Very respectfully,

Geo. H. Stewart Chief Justice

James F. Ailshie
Isaac N. Sullivan } Justices

Supreme Court of Arizona,

Phoenix,

November 15th, 1910.

Messrs. G. & C. Merriam Co.,

Springfield, Mass.

Gentlemen:

Webster's New International Dictionary maintains the high standard of former editions. Its definitions are succinct, clear, and to this, as to other courts, satisfactory as is evidenced by the frequency of citation as authority. The typographical devices, particularly the divided page, lessen the labor of consultation and thus add materially to its value.

Edmund Kent
.....
Chief Justice.

Hester M. Doan
.....
Associate Justice.

John H. Campbell
.....
Associate Justice.

W. K. Lewis
.....
Associate Justice.

Almon M. Doan
.....
Associate Justice.

STATE OF ARKANSAS.

LITTLE ROCK,

October 20th, 1910.

Messrs. G. & C. Merriam,

Springfield, Mass.

Dear Sirs:-

We have examined to some extent Webster's New International Dictionary - the 1911 edition just issued by you - and, so far as we are able to judge, as a dictionary of the English language it is about perfect. We do not see how it could be improved upon. It contains many new features not possessed by the old editions which especially commend it.

In addition to the enlargement of the vocabulary and the improvement of the definitions, it contains, besides the definition of the words, much data and information that one would generally expect to find only in an encyclopedia. The arrangement you have made whereby words that were formerly found in separate vocabularies, such as Foreign Phrases and Proverbs, Scripture Names, Names of Fictitious Persons, Abbreviations, etc., are now found with the general vocabulary, is certainly a most commendable feature. In these progressive days, time is very important, and the busy man likes to find, if he can, the word he wishes in one volume and under the vocabulary to which the word belongs, without taking the time necessary to search through several volumes and vocabularies.

Also, the division of the page whereby, in general, the words of less frequent use are arranged under a heavy black line at the bottom of the page, greatly facilitates consultation.

Many other new and desirable features could be mentioned, but let it suffice to say that there is no better Dictionary than the 1911 edition of Webster's New International.

Yours very truly,

Charles S. Hoar
C. S. Hoar
Charles S. Hoar

Samuel Frauenthal
J. E. Hart

facsimile

SAN FRANCISCO, CAL.

Mar. 24, 1911.

G. & C. Merriam Co.,

Springfield, Mass.

Gentlemen:

We have used Websters New International Dictionary for a time sufficient to find that it is the most valuable work of its kind for general use. It is not a mere revision. The work of former editions is completely recast. The new method of grouping at the bottom of each page the unimportant and rare words we find very convenient in use. The many new words coined because of recent inventions and discoveries are to be found nowhere else, and they make the new work doubly useful. The definitions of law terms are entirely satisfactory.

Very truly yours,

W. H. Beatty
Chief Justice.

Lucien Shaw
Associate Justice

John M. Hall
Associate Justice

W. G. Loring
Associate Justice.

J. C. Don
Associate Justice.

J. W. Henshaw
Associate Justice

Henry A. Wilson
Associate Justice.

State of New York.

Court of Appeals.
Judges Chambers.

Albany, N. Y., March 15th, 1911.

The Judges of the Court of Appeals of the State of New York make constant use of Webster's New International Dictionary in the discharge of their official duties. They regard it as an unsurpassed authority, not only in matters relating to their particular work but generally in all work of a literary character. The definitions are full and exact; the quotations to illustrate the definitions numerous and well chosen; the synonyms discriminating and accurate, and the entire work stamped with industry and learning. The mechanical part, including paper, printing and engraving is satisfactory in all respects. The work is invaluable and not the less so because it is published in a single volume.

Spencer F. May
Albert Haight
Wm. F. Tamm
Wm. C. Brown
Willard Bartlett
Emory A. Chase
Frederick Collins

The British Empire Dictionary

ACOUSTIC.

12

ACROTISM.

acoustic, *á-kous'- & á-kóos'tik*, *adj.* belonging to the science of sound; *n.* a remedy for deafness.

acoustic-duct, *-dukt*, *n.* the external passage of the ear.

acoustic-nerve, *-nerv*, *n.* the auditory nerve.

acoustic-telograph, *-tel'e-gráf*, *n.* a telephone; a telegraph reproducing sounds at a distance.

acoustically, *-ál-lj*, *adv.* in an acoustic manner.

acustician, *á-kous'- & á-kóos'tish'an*, *n.* one skilled in acoustics.

acustics, *á-kous'- & á-kóos'tiks*, *n.* the science of sound; the study of the effects of sound upon the organ of hearing.

acquaint, *ak-kwánt'*, *v.t.* to familiarise or make oneself conversant with; furnish information.

acquaintance, *ak-kwánt'sans*, *n.* the state of being acquainted with a person or subject; personal knowledge less than friendship; person with whom one is acquainted.

acquainted, *ak-kwánt'ed*, *p.adj.* having personal knowledge; familiar, known (*of* or *with*).

acquest, *ak-kwest'*, *n.* acquirement; acquisition; property or possession acquired other than by inheritance or succession.

acquiesce, *ak-kwi-es'*, *v.i.* to agree; comply assively; assent [followed usually by *in*].

acquiescence, *ak-kwi-es'ens*, *n.* the act of submitting; silent assent; neglect to take legal proceedings so as to imply consent.

acquiescent, *ak-kwi-es'ent*, *adj.* disposed to submit or yield tacitly; resting satisfied.

acquirable, *ak-kwir'á-bl*, *adj.* capable of being acquired.

acquire, *ak-wir'*, *v.t.* to gain or obtain possession of by one's own physical or intellectual exertions.

acquirement, *ak-kwir'ment*, *n.* the act of acquiring; that which is acquired.

acquisition, *ak-kwi-zis'hun*, *n.* the act of acquiring; the object acquired.

acquisitive, *ak-kwi-z'i-tiv*, *adj.* having a propensity to acquire; greedily disposed.

acquisitiveness, *-nes*, *n.* the propensity to acquire.

acquit, *ak-kwit'*, *v.t.*, *pres.* & *p.p.* acquitted, *pr.* acquitting; to release; set free; discharge; to pronounce not guilty.

acquit'al, *ak-kwit'al*, *n.* the act of releasing or acquitting; the state of being acquitted; a judicial pronouncement of "not guilty."

acquittance, *ak-kwit'ans*, *n.* a discharge or release from debt or other liability; a receipt barring a further demand.

acre, *á-kér*, *n.* a superficial measure of land containing, in Great Britain, the U.S., and the Colonies, 4,840 sq. yds.

acreage, *á-kér-áj*, *n.* the number of acres in a tract of land.

acred, *á-kérd*, *adj.* possessing acres or landed property.

acrid, *ak'rid*, *adj.* sharp or biting to the taste; pungent; irritating; stinging; *n.* an acrid or irritant poison.

acridity, *ak-rid'i-ti*, *n.* the quality of being acrid.

acrimonious, *ak-ri-mó-nj-us*, *adj.* bitter; caustic; stinging.

acrimony, *ak-ri-mó-nj*, *n.* sharpness of temper; bitterness of expression.

acritical, *á-krit'i-kal*, *adj.* having no crisis.

acrobat, *ak-ró-bat*, *n.* a performer on the tight-rope; one who practises tumbling, vaulting, trapezing, &c.

acrobaticism, *ak-ró-bat-izm*, *n.* the performance of acrobatic feats; the profession of an acrobat.

acrocarpona, *ak-ró-kárp'us*, *adj.* having (like the mosses) the fruit at the end of the primary axis.

acrocephalic, *ak-ró-sel'á-lik & -sél'á'lik*, *adj.* high-skulled; *n.* a man characterised by a high skull.

acrogen, *ak-ró-jen*, *n.* a cryptogamic plant.

acrogenous, *ak-roj'en-us*, *adj.* of the nature of the acrogens; increasing by growth from the top, as the tree-ferns.

acroglyphy, *ak-rográ-fi*, *n.* a method by which designs in relief on stone or metal are produced through a ground of solidified finely-powdered chalk.

acrolith, *ak-ró-lith*, *n.* a sculptured figure, the head and extremities of which are of stone and the rest of wood.

Acropolis, *á-krop'ó-lis*, *n.* the highest part or citadel of a Grecian city, as that of Athens, hence a citadel.

Acrospire, *ak-ró-spir*, *n.* the sprout of a seed.

Acrospired, *ak-ró-spir'd*, *p.adj.* having sprouts at both ends.

across, *á-kró's & -kros'*, *adv.* & *prep.* from side to side; transversely; adversely; athwart; intersecting at an angle.

Acrostic, *á-kros'tik*, *n.* a composition usually in verse, in which the first or last letters of the lines, or other letters, taken in order, form a motto, phrase, name, or word.

Acrostically, *-i-kal-lj*, *adv.* in the manner of an acrostic.

Acrotic, *á-krot'ik*, *adj.* affecting the surface.

Acrotism, *ak-ró-tizm*, *n.* weakness or absence of pulse.

Webster's New Illustrated Dictionary

acoustic (*á-kous'- & á-kóos'tik*), *adj.* belonging to the science of sound; *n.* a remedy for deafness.

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across (*á-kró's*), *adv.* & *prep.* from side to side; transversely; adversely; athwart; intersecting at an angle.

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Identical matter has been printed in red to show how much has been appropriated from the British Empire Dictionary

The British Empire Dictionary

ACT.

15

ACUPRESSURE

act, *n.* an action, process of doing; a decree of Parliament; the judgment of a court; a formal writing; one of the principal divisions of a drama; a thesis maintained by a candidate for a degree at a university: *v.t.* to do; perform; play, as on the stage; set in motion: *v.i.* to exert force or energy.

drop, *n.* the curtain lowered between the acts at a play.

of God, *of god*, *n.* a direct and irresistible act of nature that could not reasonably have been foreseen or guarded against.

of Grace, *of grās*, *n.* a general pardon or grant of privilege on the accession to the throne of a new sovereign or some special occasion.

act, *ak'ta*, *n.pl.* acts; proceedings in law and ecclesiastical courts; the records of such transactions.

acting, *akt'ing*, *p.adj.* performing a service, as those of an official.

actinia, *ak-tin'i-ā*, *n.*; *pl.* Actinæ, *-ē*, a genus of zoophytes characterised by their resemblance to flowers when the tentacles of the mouth are spread out, called popularly sea-anemones and sea-flowers.

actinoid, *ak-tin'oid*, *adj.* having the property of actinism.

actinic Process, *prō'ses*, *n.* a general term for any kind of photo-engraving.

actinic Rays, *rāz*, *n.pl.* the rays of the sun which produce chemical combinations and decompositions.

actiniform, *ak-tin'i-fōrm*, *adj.* possessing a radiated form.

actinism, *ak-tin-izm*, *n.* that property of the sun's rays which produces chemical action.

actinograph, *ak-tin'ō-graf*, *n.* an instrument for measuring the variation of the chemical rays of light.

actinoid, *ak-tin'oid*, *adj.* having the form of rays; resembling a star-fish.

actinology, *ak-ti-nol'ō-jī*, *n.* the science that treats of the chemical action of light.

actinometer, *ak-tin-om'et-ēr*, *n.* an instrument for measuring the intensity of heat-rays.

actinosa, *ak-tin'ō-zō-ā*, *n.pl.* a class of radiated soft marine zoophytes, which includes the sea-anemones, corals, &c.

acton, *ak'shun*, *n.* the state of being active; opposed to rest; the effect of one body on another (*used in sing.*); an act or thing done (*used in pl.*); a suit instituted by one party against another in a court of law; the gesture or deportment of a speaker; the performance of a function; active motion, as of machinery; the

appearance of animation, &c., given to figures; an engagement on sea or land, less important than a battle.

Actionable, *ak'shun-ā-bl*, *adj.* giving grounds for an action at law.

Active, *ak'tiv*, *adj.* endowed with or exercising the power or quality of action; constantly active; the performance and not the continuance of an action; lively, moving freely; acting quickly.

Active Bonds, *bonz*, *n.pl.* bonds bearing a fixed rate of interest from date of issue.

Active Capital, *kap'i-tal*, *n.* money used in business.

Active Commerce, *kom'ers*, *n.* commerce carried on by a nation in its own vessels.

Active List, *list*, *n.* the roll or list of officers of the navy or army liable to be called upon for active duty.

Active Service, *sēr'vis*, *n.* duty performed against an enemy.

Activity, *ak-tiv'i-ti*, *n.*; *pl.* Activities, *-tiz*, energy; the state of action.

Actor, *ak'tōr*, *n.* one who acts or performs; a stage-player; a proctor or advocate in civil causes.

Actress, *ak'tres*, *n.* a female actor.

Actual, *ak'tū-əl*, *adj.* real; existing; present.

Actualisation, *ak'tū-əl-i-zā'shun*, *n.* making actual.

Actualise, *ak'tū-əl-iz*, *v.t.* to make actual.

Actualize, *ak'tū-əl-iz*, *v.t.* to make actual.

Actualities, *ak'tū-āl'i-ti*, *n.*; *pl.* Actualities, *-tiz*, the state of being real or actual; that which is in full existence.

Actually, *ak'tū-əl-lī*, *adv.* as an existing fact.

Actuary, *ak'tū-ā-rī*, *n.*; *pl.* Actuaries, *-iz*, a registrar or clerk of a court; one who is skilled in life assurance and similar computations.

Actuate, *ak'tū-āt*, *v.t.* to move or incite to action.

Actuation, *ak-tū-ā'shun*, *n.* the state of being actuated or impelled.

Aculeate, *ā-kū'lē-āt*, *adj.* equipped with a sting; having aculei or sharp prickles; *n.* certain insects furnished with stings, as the bee.

Acumen, *ā-kū'men*, *n.* quickness of perception; penetration; insight; discrimination.

Acuminate, *ā-kū'min-āt*, *adj.* ending in a sharp point.

Acupress, *ak'ū-pres*, *v.t.* to check hemorrhage by acupressure.

Acupressure, *ak'ū-presh'ēr*, *n.* a method of checking hemorrhage in arteries during amputations by needles or wire.

Webster's New Illustrated Dictionary

act (*akt*), *n.* an action; process of doing; a decree, edict, or enactment; the judgment of a court; a formal writing; one of the principal divisions of a drama; a thesis maintained by a candidate for a degree at a university: *v.t.* to do; perform; play, as on the stage; set in motion: *v.i.* to exert force or energy.

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The British Empire Dictionary

ADJACENT.

acute, ã-kût', *adj.* sharp-pointed; intellectually sharp; quick of perception; severe; as pain or symptoms attending a disease; high in pitch; shrill.

adactyl, ã-dak'til, *adj.* without toes.

adage, ad'áj, *n.* an ancient proverb, or pithy saying.

adagio, ã-dá'jô, *n.* a slow movement; slowly and with grace; when repeated, signifying very slow.

adam's ale, ad'amz ál, *n.* water.

adam's apple, apl, *n.* a lofty species of the banana; the prominence in front of the throat, especially conspicuous in males.

adam's needle, nē'di, *n.* the popular name of the yucca.

adamant, ad'a-mant, *n.* a substance of extreme hardness; the diamond: *adj.* formed of adamant; hard.

adamantine, ad-a-man'tin, *adj.* made of adamant; impenetrable.

adapt, ã-dapt', *v.t.* to make to correspond; fit by alteration or adaptation.

adaptability, ã-dap-tá-bil'i-ti, *n.* the quality of being adaptable.

adaptation, ad-ap-tá'shun, *n.* the act of adjusting or adapting; the state of being adapted; that which is adapted.

adaye, ã-dáz, *adv.* by day; on, or in, the day.

add, ad, *v.t.* to join, unite, sum up; increase; affix.

added money, -ed-mun'í, money given by a club to increase the sweepstakes.

addendum, ad-den'dum, *n.*; *pl.* Addenda, -dà, an appendix.

adder, ad'ér, *n.* the popular name for the viper.

Addict, ad dikt', *v.t.* to devote or give oneself up to; to practise sedulously (usually in a bad sense).

Addition, ad-dish'un, *n.* the act or process of adding together; increase; the result of addition; the thing added; the adding or uniting of two or more numbers in one sum; a title added to a name, denoting rank, as esquire; a dot placed at the side of a note to indicate the lengthening of the sound by one-half.

Additional, ad-dish'un-ál, *adj.* added; supplementary.

Additionally, -li, *adv.* in addition to.

Additive, ad'di-tiv, *adj.* that may be, or is to be, added.

Addle, ad'l, *n.* & *adj.* rotten, as eggs that are barren or putrid; *v.t.* to make corrupt or putrid, as eggs; *v.i.* to become addled.

Addle-headed, {adl-hed'ed} *adj.* stupid; **Addle-pated**, {adl-pá'ted} *adj.* weak-brained; muddled.

Adorsed. See Adorsed.

Address, ad-dres', *v.t.* to straighten; to bring into line; to arrange, redress, as wrongs, &c.; to direct; speak or write to; get ready; consign; *n.* a speech delivered or written; manners and bearing; tact; adroitness; the attention of a lover.

Addressee, ad-dres-é', *n.* one who is addressed.

Adduce, ad-dús', *v.t.* to bring forward or cite in proof or substantiation of what is alleged.

Adducet, ad-dú'sent, *adj.* bringing forward or together.

Adducible, ad-dú'si-bl, *adj.* capable of being adduced.

Adductive, ad-duk'tiv, *adj.* bringing forward.

Adductor, ad-duk'tór, *n.* one who draws to.

Adductor Muscles, mus'els, *n. pl.* muscles which draw certain parts to a common centre.

Adelphous, ã-delf'us, *adj.* having clustered filaments.

Ademption, ã-demp'shun, *n.* the revocation of a grant; the lapse of a legacy.

Adept, ã-dept', *adj.* well skilled; *n.* one who is fully proficient or skilled in an art.

Adequacy, ad'é-kwá-si, *n.* adequate; sufficiency for a particular purpose.

Adequate, ad'é-kwát, *adj.* equal to requirement or occasion; fully sufficient.

Affected, ad-fek'ted, *adj.* compounded; consisting of different powers of an unknown algebraic quantity.

Affiliated. See Affiliate.

Affiliation. See Affiliation.

Adhere, ad-hér', *v.i.* to stick fast, become firmly attached to.

Adherence, ad-hér'ens, *n.* the act or state of adhering; unwavering attachment.

Adherent, ad-hér'ent, *adj.* adhering; sticking; *n.* one who adheres; a follower of a party or leader.

Adhesion, ad-hé'zhun, *n.* the state or act of adhering.

Adhesive, ad-hé'siv, *adj.* holding fast; gummed for use; sticky.

Adieu, ã-dû & ã-dú, *n.*; *pl.* Adieux, Adieus, -dúz, farewell; good wishes at parting.

Adipose, {ad'i-pôs,} *adj.* fat; of a fatty nature.

Adipous, {ad'i-pus,} *n.* nature.

Adipsia, ã-dip'si-á, *n.* absence of thirst.

Adit, ad-it, *n.* an entrance or passage; an entrance to a mine more or less horizontal.

Adjacency, ã-já'sen-si, *n.* the state of being close or contiguous.

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adam's ale (ad'amz ál), *n.* water.

adam's apple (ap-l), *n.* a lofty species of the banana; the prominence in front of the throat, especially conspicuous in males.

adamant (ad'a-mant), *n.* a substance of extreme hardness; the diamond; *adj.* formed of adamant; hard.

adamantine (ad-a-man'tin), *adj.* made of adamant; impenetrable.

adapt (ã-dapt'), *v.t.* to make to correspond; fit by alteration or adaptation.

adaptability (ã-dap-tá-bil'i-ti), *n.* the quality of being adaptable.

adaptation (ad-ap-tá'shun), *n.* the act of adjusting or adapting; the state of being adapted; that which is adapted.

add (ad), *v.t.* to join, unite, sum up; increase; affix.

addendum (ad-den'dum), *n.* [pl. addenda (-dà)], an appendix.

adder (ad'ér), *n.* the popular name for the viper.

Addict (ad-dikt'), *v.t.* to devote or give one's self up to; to practise sedulously (usually in a bad sense).

Addition (ad-dish'un), *n.* the act or process of adding together; increase; the result of addition; the thing added; the adding or uniting of two or more numbers in one sum; a title added to a name, denoting rank, as esquire; a dot placed at the side of a note to indicate the lengthening of the sound by one-half.

Additional (ad-dish'un-ál), *adj.* added; supplementary.

Additionally (-li), *adv.* in addition to.

Additive (ad'di-tiv), *adj.* that may be, or is to be, added.

Addle (ad'l), *n.* & *adj.* rotten, as eggs that are barren or putrid; *v.t.* to make corrupt or putrid, as eggs; *v.i.* to become addled.

Addle-headed (adl-hed'ed), or **Addle-pated** (adl-pá'ted), *adj.* stupid; weak-brained; muddled.

address (ad-dres'), *v.t.* to straighten; to bring into line; to arrange, redress, as wrongs, &c.; to direct; speak or write to; get ready; consign; *n.* a speech delivered or written; manners and bearing; tact; adroitness; the attention of a lover.

Addressee (ad-dres-é'), *n.* one who is addressed.

Adduce (ad-dús'), *v.t.* to bring forward or cite in proof or substantiation of what is alleged.

Adducet (ad-dú'sent), *adj.* bringing forward or together.

Adducible (ad-dú'si-bl), *adj.* capable of being adduced.

Adductive (ad-duk'tiv), *adj.* bringing forward.

Adductor (ad-duk'tér), *n.* one who draws to.

Adductor muscles (mus'ls), *n. pl.* muscles which draw certain parts to a common center.

Adept (ã-dept'), *adj.* well skilled; *n.* one who is fully proficient or skilled in an art.

Adequacy (ad'é-kwá-si), *n.* sufficiency for a particular purpose.

Adequate (ad'é-kwát), *adj.* equal to requirement or occasion; fully sufficient.

Affected (ad-fek'ted), *adj.* compounded; consisting of different powers of an unknown algebraic quantity.

Adhere (ad-hér'), *v.t.* to stick fast; become firmly attached to.

Adherence (ad-hér'ens), *n.* the act or state of adhering; unwavering attachment.

Adherent (ad-hér'ent), *adj.* adhering; sticking; *n.* one who adheres; a follower of a party or leader.

Adhesion (ad-hé'zhun), *n.* the state or act of adhering.

Adhesive (ad-hé'siv), *adj.* holding fast; gummed for use; sticky.

Adieu (ã-dû'), *n.* [pl. adieux, adieus (-dúz)], a farewell; good wishes at parting; interj. goodbye; farewell.

Adit (ad'it), *n.* an entrance or passage; an entrance to a mine more or less horizontal.

Adjacency (ãd-já'sen-si), *n.* the state of being close or contiguous.

Adjacent (ad-já'sent), *adj.* near; close to.

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The British Empire Dictionary

ADJECTIVAL

13

ADMIXTURE

adjectival, ad-jek-ti'vål, *adj.* of the nature of an adjective.

adjective, ad-jek-tiv, *n.* a word used with a substantive or noun to express the quality or attribute of the thing named, or to limit and define a thing as distinct from something else.

adjoin, ad-join', *v.t.* to unite or join; *v.i.* to lie next to.

adjourn, ad-jern', *v.t.* to put off to another day.

adjournment, ad-jern'ment, *n.* the act of adjourning; the postponement of a meeting.

adjudge, ad-juj', *v.t.* to determine in a controversy.

adjudged, ad-juj'd, *adj.* determined by judicial decree.

judgment, á-juj'ment, *n.* the act of judging.

adjudicate, ad-jü'- & á-ju'di-kät, *v.t.* to try and determine a case as a court.

adjudication, ad-jü'di-kä'shun, *n.* the act of determining judicially; a judicial sentence.

adjudicator, á-ju'di-kä-tör, *n.* one who adjudicates.

adjunct, ad'jungkt, *n.* something added to another thing, but not an essential part of it.

adjunctive, ad'jungkt'iv, *adj.* having the quality of joining or uniting.

adjunctly, ad-jungkt-li, *adv.* in connection with.

adjuration, ad-jü-rä'shun, *n.* the solemn charging on oath; the form of an oath.

adjure, ad-jür', *v.t.* to command on oath under pain of a penalty; to charge solemnly.

adjust, ad-just', *v.t.* to fit, or make exact; to make correspondent; to make accurate.

adjuster, ad-just'ter, *n.* one who regulates or adjusts.

adjustment, ad-just'ment, *n.* the act of adjusting.

adjutancy, ad'jü-tän-si, *n.* the office of an adjutant.

adjutant, ad'jü-tánt, *n.* a regimental staff-officer who assists the commanding officer.

Adjutant-General, -jen'er-al, *pl.* Adjutants-General, the chief staff-officer of an army, through whom all orders, &c., are received and issued by the general commanding.

admeasure, ad-mezh'ur, *v.t.* to measure dimensions; apportion.

admeasurement, ad-mezh'ur-ment, *n.* a measurement by a rule.

administer, ad-min'is-tér, *v.t.* to act as chief agent or minister, as a king, president, or judge; direct the application of

the laws; dispense; to cause to be taken, as medicine; to give, as an oath or a sacrament.

Administratorial, ad-min-is-tér'i-ál, *adj.* pertaining to administration.

Administrable, ad-min'is-trä-bl, *adj.* capable of being administered.

Administration, ad-min-is-trä'shun, *n.* the act of administering, as government, justice, medicine, a sacrament, or an intestate's estate; the ministry.

Administrative, ad-min'is-trä-tiv, *adj.* pertaining to administration.

Administrator, ad-min'is-trä-tör & -trä'tör, *n.* one who administers affairs; one who settles the estate of an intestate.

Administratrix, -trä'triks, *n.* a female administrator.

Admirable, ad-mi-rä-bl, *adj.* worthy of admiration; excellent.

Admiral, ad-mi-räl, *n.* the chief commander of a fleet; a naval officer of the highest rank, of which there are four grades.

Admiral-shell, -shel, *n.* the popular name of a beautiful cone-shell.

Admiralty, ad-mi-räl-ti, *n.* *pl.* Admiralties, -tiz, the department of a government having authority over naval affairs; the building in which naval affairs are transacted.

Admiralty-charts, *n. pl.* -charts, specially prepared charts issued by the hydrographic department of the Admiralty for the use of the fleet and mercantile marine. Their scale is usually half an inch to the mile.

Admiralty Court, kort, *n.* a branch of the Probate, Divorce, and Admiralty Division of the High Court of Justice.

Admiration, ad-mi-rä'shun, *n.* wonder excited by beauty or excellence.

Admire, ad-mir', *v.t.* to regard with strong approval.

Admissible, ad-mis'i-bl, *adj.* worthy of being admitted.

Admission, ad-mish'un, *n.* the power or permission to enter; the granting of an argument.

Admit, ad-mit', *v.t.* *pret.* & *p.p.* admitted, *p.pr.* admitting, to permit to enter; allow in argument; receive.

Admittable, ad-mit'a-bl, *adj.* admissible.

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Admix, ad-miks', *v.t.* to mix with something else.

Admixture, ad-miks'tür, *n.* a compound of substances mixed together.

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The British Empire Dictionary

ADMONISH

16

ADVENT SUNDAY.

admonish (ad-mon'ish), *v.t.* to reprove gently; warn; instruct.
admonition (ad-mō-nish'un), *n.* friendly reproof or warning.
admonitory (ad-mon'ī-tō-rī), *adj.* conveying reproof or warning.
adnascent (ad-nas'ent), *adj.* growing upon something else.
adnate (ad'nāt), *adj.* with organic cohesion unlike parts.
adobe (ā-dō'bā), *n.* an attributive word or adjective; an adjective used as a noun, as *adobe house*.
ado (ā-dōō'), *n.* bustle; trouble.
adobe (ā-dō'bā), *n.* unburnt brick dried in the sun, used for building in Central America and Mexico.
adulthood (ad-ūl'tūdh), *n.* the period of life between puberty and maturity; youth.
adulterant (ad-ūl'tēr-ant), *adj.* growing to maturity.
adulterate (ad-ūl'tēr-āt), *v.t.* to choose or take to one's self, as a child, an opinion, or a course of action.
adulteration (ad-ūl'tēr-ā-shun), *n.* the act of adopting; the state of being adopted; voluntary acceptance; admission into more intimate relations.
adulterator (ad-ūl'tēr-ā-tōr), *n.* one who corrupts or adulterates.
adulterer (ad-ūl'tēr-ēr), *n.* a man who commits adultery.
adulteress (-es), *n.* a woman who commits adultery.
adulterine (ad-ūl'tēr-in & -in), *adj.* resulting from adulterous intercourse; spurious; illegal.
adulterous (ad-ūl'tēr-us), *adj.* guilty of adultery.
adultery (ad-ūl'tēr-i), *n.* *pl.* Adulteries, -ies, violation of the marriage-bed.
adumbrant (ad-um'brant), *adj.* shadowing forth.
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adumbrative (ad-um'brā-tiv), *adj.* faintly representing; typical.
aduncous (ad-ung'kus), *adj.* hooked, as a parrot's bill.
ad valorem (ad vā-lō'rem), *ad v.* according to value; customs or duties levied on the value of goods as sworn to by the owner.
advance (ad-vāns'), *v.t.* to go forward; *v.i.* to further; to make a payment beforehand; *n.* improvement; an addition to or rise in value; an overture (usually used in *pl.*); a loan; payment beforehand.
advancement (ad-vāns'ment), *n.* furtherance; progress; promotion.
advantage (ad-vān'taj), *n.* a state of advance or forwardness; a benefit; the first point gained after deuce.
advantageous (ad-vān'tā'jus), *adj.* of advantage; beneficial.
advent (ad'vent), *n.* a coming or arrival; the period including the four Sundays before Christmas; arrival.
Advent Sunday, sun'dā, the Sunday nearest (whether before or after) to St. Andrew's Day (Nov. 30).

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age, size, and strength; *n.* a man or a woman.
adulterant (ā-dul'tēr-ant), *adj.* adulterating; *n.* the person or thing that adulterates.
adulterate (ā-dul'tēr-āt), *v.t.* to corrupt by baser admixture; *adj.* corrupted by baser admixture.
adulteration (ā-dul'tēr-ā-shun), *n.* the debasing or being debased by admixture; deterioration.
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ADVENTITIOUS.

17

AEROCYST.

adventitious, ad-ven'tish'us, *adj.* happening by chance; casual; fortuitous; accidental; produced out of normal and regular order.

adventual, ad-ven'tū-āl, *adj.* relating to the season of Advent.

adventure, ad-ven'tūr, *n.* an event the issue of which is determined by chance: *v.t.* to hazard or risk.

adventurer, ad-vent'ūr-ēr, *n.* one who undertakes adventures; a speculator; one who seeks social distinction by false or specious pretences.

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adverbially, -li, *adv.* with the force of an adverb.

adversary, ad-vēr'sār-i, *n.*; *pl.* Adversaries, -ies, an opponent.

adversative, ad-vēr'sā-tiv, *adj.* expressing opposition.

adverse, ad'vers, *adj.* opposed to; contrary; unfortunate; inimical.

adversity, ad-vēr'si-ti, *n.* a state of things adverse; the reverse of prosperity; misery.

avert, ad-vért, *v.i.* to turn one's attention to; refer.

advertence, ad-vēr'tens, *n.* attention.

advertency, ad-vēr'ten-si, *n.* the habit of being attentive.

advertent, ad-vēr'tent, *adj.* attentive.

advertently, -li, *adv.* in an intentional manner.

advertise, ad'ver'tiz, *v.t.* to turn the attention of others to; announce; publish.

advertisement, ad-vēr'tiz-ment, *n.* a notice in a public print; an announcement.

advice, ad-viz', *n.* an opinion given for the practical direction of conduct; information given by letter; counsel.

advice-boat, -bōt, *n.* a vessel employed to carry despatches.

advisable, ad-viz'ā-bl, *adj.* fit to be advised; prudent; expedient.

advisability, ad-viz'ā-bil'i-ti, *n.* the quality of being advisable; desirability.

advise, ad-viz', *v.t.* to offer an opinion; counsel; inform.

advised, ad-viz'd, *p. adj.* acting with caution.

advisedly, (ad-viz'd-li), *adv.* with advice; with intention; deliberately.

advisory, (ad-viz'ō-ri), *adj.* having power to advise; containing advice.

advocacy, (ad'vō-kā-si), *n.* the act of pleading for.

advocate, (ad'vō-kāt), *n.* one called to the aid of another; one who pleads the cause of another.

advocator, (ad'vō-kā-tēr), *n.* an advocate; a supporter.

advowee, (ad-vou-ē'), *n.* one who has an advowson; the patron of a living.

advowson, (ad-vou-zn), *n.* the right of presentation to a benefice.

adynamia, (ā-din-ā'mi-ā), *n.* great debility; physical weakness.

adze or adz, (adz), *n.* a cutting tool having a curved blade at right angles to the handle, used for dressing timber by ships' carpenters, cooper, &c.

adze-plane, a tool for moulding and rabbeting.

Edile, { *n.* a Roman magistrate who exercised supervision over the temples, public and private buildings, the markets, public games, sanitation, &c., hence a municipal officer.

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Egophony, ē-gōfō-ni, *n.* a sound like the bleating of a goat heard on auscultation in chest-diseases.

Holian Harp, ē-ō'li-ān hārp, *n.* a stringed instrument, the wires of which are set in motion by air.

Eon, { *n.* a period of immense duration; an age.

Eon, { *n.* a period of immense duration; an age.

Aerate, ā-ēr-āt, *v.t.* to combine or charge with carbonic-acid gas, or with air.

Aerated Bread, bred, *n.* bread raised by charging the dough with carbonic-acid gas.

Aerated Waters, wā'ters, *n. pl.* waters impregnated with carbonic-acid gas.

Aeration, ā-ēr-ā'shun, *n.* the act of aerating; oxygenation of the blood by exposure to the air in respiration.

Aerator, ā-ēr-rā-tōr, *n.* an apparatus for making aerated waters.

Aerial, ā-ēr'i-āl, *adj.* belonging to the air.

Aerially, -li, *adv.* like the air.

Aëriferous, ā-ēr-if-ēr-us & ā-e-rif-e-rus, *adj.* air-bearing.

Aëriification, ā-ēr-if-i-kā'shun, *n.* the state of being aeriform.

Aeriform, ā-ēr-i-fōrm, *adj.* having the form of air; gaseous.

Aerify, ā-ēr-i-fi, *v.t.* *pret.* & *p.p.* aerified *p.pr.* aerifying, to combine with air.

Aerocyst, ā-ēr-ō-sist, *n.* one of the air-bladders of algae.

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adversity (ad-vēr'si-ti), *n.* a state of things adverse; the reverse of prosperity; misery.

advert (ad-vért'), *v.i.* to turn one's attention to; refer.

advertence (ad-vēr'tens), *n.* attention.

advertency (ad-vēr'ten-si), *n.* the habit of being attentive.

advertent (ad-vēr'tent), *adj.* attentive.

advertently (-li), *adv.* in an intentional manner.

advertise (ad'ver'tiz), *v.t.* to turn the attention of others to; announce; publish.

advertisement (ad-vēr'tiz-ment), *n.* a notice in a public print; an announcement.

advice (ad-viz'), *n.* an opinion given for the practical direction of conduct; information given by letter; counsel.

advisable (ad-viz'ā-bl), *adj.* fit to be advised; prudent; expedient.

advisability (ad-viz'ā-bil'i-ti), *n.*

the quality of being advisable; desirability.

advise (ad-viz'), *v.t.* to offer an opinion to; counsel; inform.

advised (ad-viz'd), *p. adj.* acting with caution.

advisedly (ad-viz'd-li), *adv.* with advice; with intention; deliberately.

advisory (ad-viz'ō-ri), *adj.* having power to advise; containing advice.

advocacy (ad'vō-kā-si), *n.* the act of pleading for.

advocate (ad'vō-kāt), *n.* one called to the aid of another; one who pleads the cause of another.

advocator (ad'vō-kā-tēr), *n.* an advocate; a supporter.

advowee (ad-vou-ē'), *n.* one who has an advowson; the patron of a living.

advowson (ad-vou-zn), *n.* the right of presentation to a benefice.

adynamia (ā-din-ā'mi-ā), *n.* great debility; physical weakness.

adze or adz (adz), *n.* a cutting tool having a curved blade at right angles to the handle, used for dressing timber by ships' carpenters, cooper, &c.

adze-plane, a tool for moulding and rabbeting.

edile or edile (ē'dil), *n.* a Roman magistrate who exercised supervision over the temples, public and private buildings, the markets, public games, sanitation, &c., hence a municipal officer.

holian harp (ē-ō'li-ān hārp), *n.* a stringed instrument, the wires of which are set in motion by air.

eon or eon (ē'on), *n.* a period of immense duration; an age.

aerate (ā-ēr-āt), *v.t.* to combine or charge with carbonic-acid gas, or with air.

aerated bread (bred), *n.* bread raised by charging the dough with carbonic-acid gas.

aëriation (ā-ēr-ā'shun), *n.* the act of aerating; oxygenation of the blood by exposure to the air in respiration.

aërial (ā-ēr-i-āl), *adj.* belonging to the air.

aërially (-li), *adv.* like the air.

aëriification (ā-ēr-if-i-kā'shun), *n.* the state of being aeriform.

aëriiform (ā-ēr-i-fōrm), *adj.* having the form of air; gaseous.

aëriify (ā-ēr-i-fi), *v.t.* [*pret.* & *p.p.* aerified, *p.pr.* aerifying], to combine with air.

aërocyst (ā-ēr-ō-sist), *n.* one of the air-bladders of algae.

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The British Empire Dictionary

AERO-DYNAMICS.

18

AFFIRMATION.

aerodynamics, *ā-ēr-ō-di-nam'iks*, *n.* the science which treats of air in motion.

aërolite, (*ā-ēr-ō-lit*), *n.* a stone falling from the air; a meteorite.

aërolitic, *ā-ēr-ō-lit'ik*, *adj.* pertaining to aërolites.

aërologic, (*ā-ēr-ō-loj'ik*), *adj.* pertaining to aërology.

aërology, *ā-ēr-ol'ō-jy*, *n.* the science which treats of the air.

aërometer, *ā-ēr-om'e-tēr*, *n.* an instrument for weighing the air.

aëronaut, *ā-ēr-ō-nāt*, *n.* an aerial navigator; a balloonist.

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aëronautics, *ā-ēr-ō-nā'tiks*, *n.* aerial navigation.

aërophone, *ā-ēr-ō-fōn*, *n.* an instrument invented by Edison for increasing the intensity of sound.

aërophor, *ā-ēr-ō-fōr*, *n.* an apparatus used in spinning-factories to moisten the air, to counteract the electricity produced by the friction of the machinery.

aërophyte, *ā-ēr-ō-fit*, *n.* an air-plant; a parasitical plant.

aërostat, *ā-ēr-ō-stat*, *n.* a balloon; a flying machine.

aërostatic, (*ā-ēr-ō-stat'ik*), *adj.* pertaining to aërostatics.

aërostatical, (*ā-ēr-ō-stat'ik*), *adj.* pertaining to aërostatics.

aërostatics, *ā-ēr-ō-stat'iks*, *n.* the science which treats of the equilibrium of bodies sustained in air.

aëry, *ēr'i*, *n.* an eagle's nest; a brood of eagles or hawks.

aesthesiometer, *ēs-thē-si-om'e-tēr*, *n.* an instrument for determining sensibility of touch.

ethete, *ēs'thēt*, *n.* one who exaggerates estheticism.

esthetic, (*ēs-thet'ik*), *adj.* pertaining to esthetics.

esthetic, (*ēs-*), *adj.* pertaining to esthetics.

esthetic School, (*ēs-thet'ik*), a school of art composed of devotees of the beautiful.

estheticism, (*ēs-thet'ik-sizm*), *n.* love for, or devotion to, the beautiful.

esthetics, (*ēs-thet'iks*), *n.* the science or theory of the beautiful.

esthetics, (*ēs-*), *theory of the beautiful.*

esthophysiology, *ēs-thē-fiz-i-ol'ō-jy*, *n.* the physiology of sensation.

estivation. See Estivation.

ether. See Ether.

ethioscope, *ē-thi-ō-skōp*, *n.* an instrument for measuring changes of temperature of the sky, as when clear or clouded.

Etymology. See Etymology.

Afar, *ā-fār*, *adv.* at, to, or from, a distance.

Affability, *af-ā-bil'i-ti*, *n.* the quality of being affable.

Affable, *af-ā-bl*, *adj.* easy to be addressed; courteous.

Affair, *af-ār*, *n.* that which is done, or is to be done; business.

Affect, *ā-fekt'* & *af-fekt'*, *v.t.* to produce an effect upon; seek by natural affinity; assume the appearance of; pretend.

Affectation, *af-ek-tā'shun*, *n.* the assuming a manner which is not one's own.

Affecting, *ā-fek'ting*, *adj.* having power to excite the emotions; pathetic.

Affection, *ā-fek'shun*, *n.* having the feelings affected; inclination; attachment; fondness; disease.

Affectional, *ā-fek'shun-āl*, *adj.* relating to the affections.

Affectionate, *ā-fek'shun-āt*, *adj.* having affection; kind.

Afferent, *af-fēr-ent*, *adj.* conveying inwards or to a part.

Affettuoso, *āf-fet-too-ō'sō*, *adj.* tender; pathetic; a direction in music.

Affiance, *af-fī'āns*, *n.* trust; a marriage-contract; *v.t.* to betroth.

Affix, *ā-fīx*, *v.* to fasten; to attach; to affix to a wall; a poster.

Affidavit, *af-i-dā'vit*, *n.* a sworn statement in writing.

Affiliable, *ā-fil'i-ā-bl*, *adj.* capable of being affiliated.

Affiliate, *ā-fil'i-āt*, *v.t.* to assign a child to its father; connect with in origin; connect with a parent society; *v.i.* to be intimately connected or associated (followed by *with*).

Affiliation, *ā-fil-i-ā'shun*, *n.* assignment of a child to its father; connection by way of descent.

Affinity, *ā-fīn'i-ti*, *n.* *pl.* Affinities, viz. nearness of kin. [Affinity is relationship by marriage; consanguinity, relationship by blood.] Physical or chemical attraction; a relationship between species or groups depending on similarity of structure.

Affirm, *ā-fēr'm'* & *af-fēr'm*, *v.t.* to assert strongly; *v.i.* to confirm, as a judgment, decree, or order, in an appellate court; aver.

Affirmance, *ā-fēr'māns*, *n.* confirmation.

Affirmant, *ā-fēr'mānt*, *n.* one who affirms; one who affirms instead of taking an oath.

Affirmation, *af-ēr-mā'shun*, *n.* an avowal; the solemn declaration permitted to those

Webster's New Illustrated Dictionary

aëro-dynamics (*ā-ēr-ō-di-nam'iks*), *n.* the science which treats of air in motion.

aërogram (*ā-ēr-ō-gram*), *n.* a wireless telegraph message.

aërolite (*ā-ēr-ō-lit*), *n.* a meteorite.

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aëroplane (*ā-ēr-ō-plān*), *n.* a flying machine, distinguished from an airship or balloon.

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affirmation (*af-ēr-mā'shun*), *n.* an avowal; the solemn declaration permitted to those who have conscientious scruples about taking an oath.

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The British Empire Dictionary

ANNOTATORY.

44

ANSERING.

annuity, *an-nū'i-tū-rī*, *adj.* in the nature of containing, annotations.

anna, *an-nā*, *n.* See Arnotto.

announce, *an-nūn's*, *v.t.* to proclaim or make known, formally, or in a public manner; pronounce by judicial sentence; proclaim.

announcement, *an-nūn's-ment*, *n.* the act of announcing; that which is announced; proclamation.

annoy, *an-nōi'*, *n. pret. & p.p. -ed, p.p. -ing*, *v.t.* to vex or trouble by repeated acts; harass or discompose by petty injury or opposition; *v.i.* to be troubled. **annoyance**, *an-nōi'āns*, *n.* the act of annoying; or causing vexation; the state of being annoyed; the thing or act which annoys.

annoyingly, *an-nōi'ing-lī*, *adv.* in a vexatious manner.

annual, *an-nū-āl*, *adj.* once in twelve months; yearly; of or belonging to a year; published once a year; completed in a year; existing or living only for a year or season. **annual plant**, *n.* an anniversary mass said for a deceased person; the fee paid for such a mass.

annually, *-lī*, yearly; happening, returning, completed year by year.

annuitant, *an-nū'i-tānt*, *n.* one who is in receipt of, or is entitled to receive, an annuity.

annuity, *an-nū'i-tī*, *n.* *pl.* Annuities, *-tix*, payment of a sum of money by periodical or yearly instalments.

annul, *an-nūl'*, *v.t., pret. & p.p. annulled*, *annulling*, to make void, abolish, or annul, as a law, decree, or compact.

annular, *an-nū-lār*, *adj.* ring-like; in the form of a ring or annulus; *n.* the ring of light surrounding the moon's body in an annular eclipse of the sun.

annulate, *an-nū-lāt*, *adj.* ringed; having ring-like bands or circles.

annulation, *an-nū-lā'shun*, *n.* a ring-like formation.

annulet, *an-nū-let*, *n.* a little ring; a small fillet encircling a column.

annulment, *an-nūl'ment*, *n.* the act of annulling; abolition; invalidation.

annulose, *an-nū-lō'sā*, *n.* the annulose animals, as crustaceans, insects, worms.

annulose, *an-nū-lō's*, *adj.* composed of a succession of rings.

annunciate, *an-nūn'si-āt*, *v.t.* to make known officially or publicly; announce.

annunciation, *an-nūn'si-ā'shun*, *n.* the act of announcing; the Church festival (Lady-day, Mar. 25) commemorating the intimation of the Incarnation made by the angel Gabriel to the Virgin Mary (Luke i. 28-33).

annunciator, *an-nūn'shi-ā-tōr*, *n.* a signalling apparatus; an indicator used in hotels, and connected with the bells and telephones, to show in which room attendance is required.

Anode, *an'ōd*, *n.* the path of the electric current from the positive to the negative pole; the positive pole.

Anodyne, *an'ō-dīn*, *adj.* assuaging pain; *n.* a drug which relieves pain.

Anoint, *ā-nōint'*, *v.t.* to pour oil upon, in a religious ceremony; consecrate.

Anomalistic, *ā-nom-ā-lis'tik*, *adj.* pertaining to the anomaly or angular distance of a planet from its perihelion.

Anomalistic Year, *-yēr*, *n.* the time occupied by the earth in passing through its orbit (365d. 6hrs. 13m. 48s.).

Anomalous, *ā-nom-ā-lus*, *adj.* deviating from the common order; abnormal.

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Anonym, *an'ō-nim*, *n.* a person who remains nameless; a pseudonym.

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Anonymous, *ā-non'i-mus*, *adj.* bearing no author's name; nameless.

Anorganology, *an-ōr-gan-ol'ō-jī*, *n.* one of the two great divisions of natural science which deals with inorganic objects.

Anorthic, *an-ōr'thik*, *adj.* irregular in crystallization.

Anoemia, *an-ōs'mī-ā*, *n.* loss of the sense of smell.

Another, *ā-nūth'ēr*, *adj. & pron.* one more; not the same; any other; any or some one else.

Anotta, *an'ō-tā*, *n.* See Arnotto.

Anourous, *an-ō-ur'us*, *adj.* tailless, as the Anouros, *—ū-rus*, frog and toad.

Ansa, *an'sā*, *n.* *pl.* Anse, *-sē*, a handle, as of a vase; the projecting ends of Saturn's rings.

Assate, *an'sāt*, *adj.* furnished with a handle.

Anserine, *an'sēr-in*, *adj.* relating to or resembling a goose; stupid as a goose.

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Anserine (an'sēr-in), *adj.* relating to or resembling a goose; stupid as a goose.

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The British Empire Dictionary

BOOT.

121

BOSON.

boot, *n.* profit; that which is thrown as an inducement to a bargain, or to make an exchange equal.

boot, *v.t.* to profit; advantage; avail usually with *it*.

boot, *n.* a leather covering for the foot and the lower part of the leg; an old instrument of torture; a receptacle for luggage at either end of a coach; a driving apron of leather or rubber-cloth: *v.t.* to put boots on; kick with the boot [U.S.]

boot-tré, *n.* an instrument for stretching boots.

bootee, *n.* a half-boot, or short boot, for women; a child's knitted boot.

booth, *n.* a temporary structure made of boards, canvas, &c.

bootless, *adj.* without advantage.

boots, *n.* the servant in a hotel who cleans the boots of the guests.

booty, *n.* *pl.* Booties, *-ies*, spoil taken in war; plunder; pillage.

booz, *v.t.* to drink immoderately; *n.* *pl.* *boozes*, *-ies*, tipple; *n.* liquor; drink; carouse; spree.

boze, *n.* a fierce, dry N.E. wind which blows on the coasts of the Adriatic Sea.

borax, *n.* *borax*, *adj.* pertaining to, or reduced from, borax.

boracic acid, *n.* a compound of boron with oxygen and hydrogen.

boragin, *n.* a plant having medicinal properties and used occasionally in compounding claret-cup, &c.

boraks, *n.* a salt compounded of boracic acid and soda, used as a flux in soldering metals, and in the manufacture of glass, enamel, artificial gems, &c.

border, *n.* the face of coal parallel to the natural fissures.

border, *n.* planking of a ship's side; the servile tenure by which a vassal of the lowest rank held his cottage.

bordeaux, *n.* red and white wines produced in the district of Bordeaux, France.

border, *n.* the outer part or edge of anything; a margin; brink; boundary; a narrow flower bed: *v.t.* to make a border about, or to adorn with a border; *adj.* to touch at the edge; *boundary* (with *on* or *upon*).

border-land, *n.* land forming a border or frontier; an uncertain or debatable district.

bore, *v.t.* to pierce or drill a hole in; to force by piercing or drilling; to force (as a passage) with effort; weary by tedious repetition, or by dullness; annoy: *v.i.* to pierce or penetrate by boring, &c.; push

forward toward a certain point: *n.* a hole made by boring; the calibre or internal diameter of a hole; a person or thing that wears by proximity or dullness; anything which causes ennui.

Bore, *n.* a tidal wave which breaks in the estuaries of some rivers, and being impeded by the narrowing channel, rises in a watery ridge and courses along with great force and noise.

Bore, *pret.* of Bear.

Borean, *adj.* northern; pertaining to the North wind.

Borecole, *n.* a variety of kale.

Boredom, *n.* ennui; the realm of bores; bores collectively.

Boride, *n.* a compound of boron with a metallic base.

Born, *born*, *adj.* innate; inherited.

Born, *pp.* of Bear, to bring forth.

Borne, *pp.* of Bear, to carry.

Bornite, *n.* a valuable ore of copper.

Boroglyceride, *n.* an antiseptic containing boric acid, glycerine, &c.

Boron, *n.* a non-metallic element occurring abundantly in borax.

Borough, *n.* a corporate town, possessing an organised municipal government, and special privileges granted by royal charter; a town having the right of Parliamentary representation.

Borough English, *adj.* a custom existing in some parts of England, by which an estate descends to the youngest son instead of the eldest, or, if there is no son, to the youngest brother.

Borrow, *v.t.* to obtain (a thing) on loan; adopt; appropriate; copy.

Bort, *n.* imperfect or inferior diamonds used for polishing other stones.

Boscage, *n.* ground covered with trees and shrubs; woods; thickets; a wooded landscape.

Bosh, *n.* absurd or empty talk; utter nonsense: *interj.* humbug!

Bosh, *n.* butterine or imitation butter.

Bosjesman, *n.* a Bushman.

Bosket, *n.* a grove; a thicket.

Bosky, *adj.* woody; bushy.

Bosom, *n.* the breast; clothing covering the breast; the affections or passions; something likened to a bosom, as a sustaining surface, inmost recess, &c.: *adj.* pertaining to the bosom; intimate; cherished; beloved; worn on the bosom: *v.t.* to place or harbour in the bosom; cherish; conceal.

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boot (bōt), *n.* profit; that which is thrown in as an inducement to a bargain, or to make an exchange equal.

boot (bōt), *v.t.* to profit; advantage; avail (usually with *it*).

boot (bōt), *n.* a leather covering for the feet and the lower part of the leg; an old instrument of torture; a receptacle for luggage at either end of a coach; a driving apron of leather or rubber-cloth: *v.t.* to put boots on; kick with the boot.

boots (bōts), *n.* the servant in a short boot, for women; a child's knitted boot.

booth (bōth), *n.* a temporary structure made of boards, canvas, &c.

bootless ('les), *adv.* without advantage.

boots (bōts), *n.* the servant in a hotel who cleans the boots of the guests.

booty (bō'ti), *n.* [pl. booties ('ti)], spoil taken in war; plunder; pillage.

boze or **boase** (bōs), *v.t.* to drink immoderately; tipple: *n.* liquor; drink; a carouse; spree.

boze (bō'ti), *n.* a fierce, dry N.E. wind which blows on the coasts of the Adriatic Sea.

boracic (bō-ras'ik), *adj.* pertaining to, or produced from, borax.

boracic acid (as'id), *n.* a compound of boron with oxygen and hydrogen.

borax (bō-raks), *n.* a salt compounded of boracic acid and soda, used as a flux in soldering metals, and in the manufacture of glass, enamel, artificial gems, &c.

border (bord), *n.* the face of coal parallel to the natural fissures.

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forward toward a certain point: *n.* a hole made by boring; the calibre or internal diameter of a hole; a person or thing that wears by proximity or dullness; anything which causes ennui.

bore (bōr), *n.* a tidal wave which breaks in the estuaries of some rivers, and, being impeded by the narrowing channel, rises in a watery ridge and courses along with great force and noise.

bore, *p.t.* of bear.

borean (bōr'ē-an) or **boreal** (-āl), *adj.* northern; pertaining to the North, or to the North wind.

borecole (bōr'kol), *n.* a variety of kale.

boredom (bōr'dum), *n.* ennui; the realm of bores; bores collectively.

boride (bō'rid), *n.* a compound of boron with a metallic base.

born (bōr), *pp.* innate; inherited.

born, *pp.* of bear, to bring forth.

borne, *pp.* of bear, to carry.

bornite (bōr'it), *n.* a valuable ore of copper.

boroglyceride (bō-rō-glis'ē-rid), *n.* an antiseptic containing boric acid, glycerine, &c.

boron (bō'ron), *n.* a non-metallic element occurring abundantly in borax.

borough (bō'ro), *n.* a corporate town.

borough English (ing'lish), *n.* a custom existing in some parts of England, by which an estate descends to the youngest son instead of the eldest, or, if there is no son, to the youngest brother.

borrow (bor'ō), *v.t.* to obtain (a thing) on loan; adopt; appropriate; copy.

bort (bōrt), *n.* imperfect or inferior diamonds used for polishing other stones.

boscage or **boskage** (bos'kaj), *n.* ground covered with trees and shrubs; woods; thickets; a wooded landscape.

bosh (bosh), *n.* absurd or empty talk; utter nonsense: *interj.* humbug!

bosket (bos'ket), *n.* a grove; a thicket.

bosky (bos'ki), *adj.* woody; bushy.

bosom (bos'um), *n.* the breast; clothing covering the breast; the affections or passions; something likened to a bosom, as a sustaining surface, inmost recess, &c.: *adj.* pertaining to the bosom; intimate; cherished; beloved; worn on the bosom: *v.t.* to place or harbor in the bosom; cherish; conceal.

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The British Empire Dictionary

CONFORMABILITY.

193

CONGRUOUS.

conformability, -fōrm-ā-bī'l-i-ti, *adj.* the quality or state of being conformable.

conformable, ('ā-bl), *adj.* like; corresponding; compliant; in parallel order.

conformation, -fōr-mā'shun, *n.* structure; arrangement; shape.

conformist, 'ist, *n.* a member of the Established Church.

conformity, 'i-ti, *n.* compliance with established forms; resemblance.

confound, kon-fōund', *v.t.* to mingle; perplex; astonish; confuse; overthrow.

conformity, -fōr-mā'shun, *n.* the act of conforming; a miscellaneous collection.

congruence, -grōo-ens, *n.* agreement; consistency.

congruent, -ent, *adj.* suitable; agreeing.

congruity, 'i-ti, *n.* agreement; fitness.

congruous, 'grōo-us, *adj.* accordant; fit.

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confound (kon-fōund'), *v.t.* to mingle; perplex; astonish; confuse; overthrow.

confraternity (-frā-tēr-ni-ti), *n.* [pl. confraternities (-tiz)], a brotherhood or society of men associated for a common purpose.

confrère (kōn-frā'r), *n.* an associate.

confront (kon-frunt'), *v.t.* to stand face to face [with *with*]; oppose; compare.

confuse (kon-fūz'), *v.t.* to mingle; jumble up; render indistinct; disconcert; perplex.

confusion (-fū'zhun), *n.* the act of confusing; perplexity; loss of self-possession; disorder; tumult.

confutation (-fū-tā'shun), *n.* disproof.

confute (kon-fūt'), *v.t.* to prove to be false or invalid; convict of error.

congenial (-jē-niāl), *adj.* kindred; from a liquid to a solid state by cold; *v.t.* to congregate by cold.

congelation (-jē-lā'shun), *n.* the act of congealing.

congenial (-jē-niāl), *adj.* kindred; pleasant and sympathetic; cognate.

congeniality (-ni-āl-i-ti), *n.* the state or quality of being congenial.

congenital (-jen'i-tāl), *adj.* existing, or produced, at birth; constitutional.

conger (kong-gēr), *n.* a large sea-eel.

congeries (kon-jē-ri-ēs), *n. sing. & pl.* a collection of particles into one mass.

congest (kon-jest'), *v.t.* to accumulate.

congested ('ed), *p.adj.* unduly crowded; containing an unnatural accumulation of blood.

congestion (-jest'yun), *n.* an overcrowded condition, especially of the blood-vessels.

congestive ('tiv), *adj.* implying congestion.

conglomerate (-glom'er-āt), *v.t.* to gather into a ball or round mass;

adj. collected or clustered together. *n.* a rock composed of rounded or water-worn fragments of pre-existent rocks.

conglomeration (-ēr-ā'shun), *n.* the act of conglomerating; a miscellaneous collection.

conglutinate ('ti-nāt), *v.t.* to glue together; *adj.* glued together; united by an adhesive substance.

conglutination (-nā'shun), *n.* the act of gluing or joining together; coalescence.

conglutinative ('ti-nā-tiv), *adj.* having power to unite or heal wounds.

congratulate (kon-grat'ā-lāt), *v.t.* to felicitate on account of some happy event [with *on* or *upon*].

congratulation (-grat'ā-lā'shun), *n.* the act of congratulating.

congratulator ('ū-lā-tēr), *n.* one who congratulates.

congratulatory (-tō-ri), *adj.* expressing congratulations.

congregate (kong-grē-gāt), *v.t.* to assemble; gather together; *v.i.* to come together.

congregation (-gā'shun), *n.* an assembly, especially of persons for religious worship.

congregational (-āl), *adj.* pertaining to a congregation.

Congregationalism ('shun-āl-izm), *n.* a democratic form of church government, each congregation being self-governed.

Congregationalist (-āl-ist), *n.* an adherent to Congregationalism; *adj.* pertaining to Congregationalism.

congress (kong-gres), *n.* a conference; an assembly of ambassadors, &c., for the settlement of international affairs.

Congress (kong-gres), *n.* the national legislature of the United States.

Congressional (kon-gresh'un-āl), *adj.* pertaining to Congress.

Congressman (-mān), *n.* a member of Congress, especially of the House of Representatives.

congruence ('grōo-ens), *n.* suitability; agreement; consistency. Also congruency.

congruent ('ent), *adj.* suitable; agreeing.

congruity ('i-ti), *n.* agreement; fitness.

congruous ('grōo-us), *adj.* accordant; fit.

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The British Empire Dictionary

IMPOST.

410

IMPRESS MONEY.

impost ('pɒst), *n.* that which is imposed or levied; a tax, tribute, or duty, esp. a customs-duty levied by government on imports; the top member of a pillar, on which the arch rests.

impostor ('pɒstər), *n.* one who imposes upon others by an assumed character or false pretensions.

impostress ('trɛs), *n.* a female impostor.

impress ('pres), *v.t.* to mark, stamp, or print by pressure; to affect forcibly, or stamp deeply on, the mind; to imprint; to inculcate; to compel to enter the public service as soldiers or sailors, esp. to carry men off forcibly to serve in the navy; to seize for the public service, as money or provisions; *n.* (im'pres) a mark made by pressure; an image or figure; a mark of distinction; characteristic; stamp; an impression or image fixed in the mind.

impressure ('pos-tūr), *n.* deception, esp. that which is practised under an assumed character or by false pretensions.

impressible ('i-bl), *adj.* capable of being impressed; susceptible of impressions.

impressment ('pres-ment), *n.* the state of being pressed in body or mind; feebleness; want of capacity; deficiency of means to achieve an end; want of procreative or moral power, esp. in the male.

imprudent ('pɒ-tent), *adj.* wanting in physical, mental, or moral power; weak; deficient in capacity; lacking self-restraint; acting in procreative or sexual power.

imprison ('pɒ-ten), *v.t.* to shut up in a pound or cage; as stray cattle; confine; hold in custody of a court.

impoverish ('pɒ-vər-ish), *v.t.* to make poor; to reduce to poverty; cause to deteriorate in quality or productiveness.

impoverishment ('ment), *n.* the act of impoverishing; the state of being impoverished; indigence; deterioration.

impracticability ('prak-ti-kā-bil-i-ti), *n.* the quality of being impracticable.

impracticable ('ti-kā-bl), *adj.* not to be effected by the means employed, or at command; not easily dealt with; unmanageable; impossible; intractable.

impate ('pre-kāt), *v.t.* to invoke, esp. an evil or curse upon; curse; wish evil to.

impetrate ('pre-kā-tō-ri), *adj.* invoking or a curse.

impugnability ('preg-nā-bil-i-ti), *n.* the quality of being unconquerable.

impugnable ('nā-bl), *adj.* not to be captured, or overcome; not to be overcome, as virtue.

impugnably ('bl), *adv.* so as to defy attack.

impregnate ('preg-nāt), *v.t.* to make pregnant; fecundate; fertilize; infuse an active principle, or the particles of another substance, into; imbue; saturate.

impresario ('prā-sā-rē-ō), *n.* the manager of an opera or concert company; one who engages singers and brings them before the public.

impressible ('pre-skrīp-ti-bl), *adj.* not to be added on prescription; not to be added or lost by lapse of time; independent of external authority; inalienable; evidencing.

impress ('pres), *v.t.* to mark, stamp, or print by pressure; to affect forcibly, or stamp deeply on, the mind; to imprint; to inculcate; to compel to enter the public service as soldiers or sailors, esp. to carry men off forcibly to serve in the navy; to seize for the public service, as money or provisions; *n.* (im'pres) a mark made by pressure; an image or figure; a mark of distinction; characteristic; stamp; an impression or image fixed in the mind.

impressibility ('i-bl-i-ti), *n.* the quality of being impressible.

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impression ('pres-un), *n.* the mark made by a stamp or mould; style or character formed by external force or influence; the mark or stamp which is the result of external force or influence; an image in the mind caused by something external to it; the immediate effect produced upon the mind by a sensation, passion, or emotion; an indistinct or vague notion, remembrance, or belief; a copy taken by pressure from type; number of copies printed at once; edition.

impressionability ('i-bl-i-ti), *n.* the quality of being impressionable.

impressionable ('i-bl), *adj.* capable of receiving impressions; susceptible.

impressional ('un-əl), *adj.* pert. to impression.

impressionism ('un-izm), *n.* the doctrine that natural objects should be painted—in literature, described—so as to reproduce only their larger and more immediate effect or impression, without selection or elaboration of details.

impressionist ('un-ist), *n.* one who, in art or in literature, adheres to the theory of impressionism.

impressionistic ('is-tik), *adj.* pert. to, or characterised by, impressionism.

impressive ('pres-iv), *adj.* capable of making impression.

impressively ('li), *adv.* in an impressive, affecting, or touching manner.

impressiveness ('nes), *n.* the quality of being impressive.

impressment ('pres-ment), *n.* the act of seizing for public use, or of compelling to enter the public service.

impressor ('dr), *one who, or that which, impresses.*

impress ('pres), *v.t.* to advance on loan; *n.* money advanced; earnest money.

Imprest Money ('mun), money advanced by the Crown for some public service, esp. money formerly paid on enlistment.

Webster's New Illustrated Dictionary

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able, -próčv'á-bl, *adj.* capable of
improved,

Impulsively, -li, *adv.* by impulse.
Impulsiveness, -ness, *n.* the quality of being

ter; profitable use or application of anything; that by which the value of anything, especially property, is

Impulsiveness (-ness), *n.* the quality of being impulsive.

The British Empire Dictionary

IMPUNITY.

418

INBOARD.

impunity (-pūn'i-ti), *n.* freedom from punishment, injury, or loss.

impure (-pūr'), *adj.* mixed with extraneous matter; unchaste; unclean; dirty; gross; accurate or idiomatic: said of a language or style.

impudently (-li), *adv.* in an I. manner.

impureness (-nes), *n.* the quality of being impure; impurity.

impurity ('ti), *n.* *pl.* Impurities. -tiz, want of purity, physical or moral; that which is, or is, impure.

imputable (-pūt'ā-bl), *adj.* that may be imputed, charged, or ascribed.

imputation (-tā'shun), *n.* the act of imputing or charging; anything imputed or charged, as, in the way of discredit; censure; reproach; insinuation; the doctrine that the sin of Adam is attributed to his posterity, and the righteousness of Christ to the believer.

impute (-pūt'), *v.t.* to charge, attribute, or ascribe, esp. a fault; attribute (sin or righteousness) as derived from another.

Irish, *n.* a species of soup made in the Highlands of Scotland. Also **Irish**.

in- prefix meaning in, within, inside, forming the first element of many compound words: the sense is usually self-evident, as in **inability**, **inaccessible**, &c.

inadvertence (-in-ad-vērt'ens), *n.* want of attention; oversight; mistake. Also **inadvertency**.

inadvertent (-ent), *adj.* inattentive; heedless; unconscious.

in-palm (-aj'ā-pām), *n.* a tall S. Amer. palm.

inalienability (-ā-lī-an-ā-bil'i-ti), *n.* the quality of being inalienable.

inalienable (-ā-bl), *adj.* that cannot, or should not, be alienated, surrendered, or transferred to another.

inalienableness (-nes), *n.* inalienability.

inalienably (-bli), *adv.* so as to be inalienable.

in-ānām, *n.* in India, a grant of land for religious or public uses.

inamorata (-ā-mō-rā'ta), *n.* a woman with whom one is in love; sweetheart; mistress.

inamorato (-tō), *n.* a man who is in love; a lover.

inanimado, *adv.* bred from animals of the same parentage.

inane (-ān'), *adj.* empty; void; senseless; frivolous: *n.* infinite void; space.

in-ān-gā, *n.* a N. Zealand fish.

inanimate (-in-an'i-māt), *adj.* not animate or animated; dead; spiritless; lifeless.

inanimation (-ā-nish'un), *n.* emptiness; exhaustion from lack of nourishment.

inanities (-an'i-ti), *n.* *pl.* Inanities. -tiz, emptiness; mental vacuity; frivolity: *pl.* vanities.

inappellable (-ap-pe'l'ā-bl), *adj.* not admitting of appeal; final.

inappetence (-ap'i-tens), *n.* want of appetite; absence of desire. Also **Inappetency**.

inappreciable (-prē'shi-ā-bl), *adj.* not to be appreciated or estimated; of no consequence.

in-ār, *n.* a kind of tunic worn by the ancient Irish.

inarch (-in-arch'), *v.t.* to graft by uniting a scion to a stock without separating the scion from its parent tree.

inarticulate (-adj'), *adj.* not uttered with intelligible distinctness; incapable of speech; not articulated; not jointed, segmented, or valued.

inarticulately (-li), *adv.* in an I. manner.

inarticulateness (-nes), *n.* indistinctness of utterance.

in articulo mortis (-ar-tik'ū-lō mōr'tis), at the moment of death: a phrase used in connection with the execution of deeds by persons at the point of death.

inasmuch (-az-much'), *adv.* in like degree, seeing that (with *as*); because.

inaugural (-ā-gū-rāl), *adj.* pert. to an inauguration: *n.* an inaugural address [U.S.].

inaugurate (-gū-rāt), *v.t.* to induct into office with appropriate ceremonies; invest with office in a formal manner; consecrate; make a formal beginning of; initiate, as a new policy; celebrate the first public use of by some opening ceremony; dedicate, as a public building.

inaugurator (-rā-tōr), *n.* one who inaugurates, or initiates.

inauguratory (-tō-rī), *adj.* pert. to inauguration.

inauguratrix (-triks), *n.* a female who inaugurates.

in aula regis (-ā-lā rē'gis), in the king's hall or court.

inaurate (-ā-rāt), *adj.* having metallic golden lustre: said of insects.

inauspicious (-spish'us), *adj.* ill-omened; unlucky; unfavourable; unfortunate.

in banco (-bang'kō), on the bench; full bench.

inbeing (-be-ing), *n.* inherent existence; inherence; inseparableness.

inboard (-bōrd), *adv.* and *adj.* within the ship; not projecting over the bulwarks.

Webster's New Illustrated Dictionary

impunity (-pūn'i-ti), *n.* freedom from punishment, injury, or loss.

impure (-pūr'), *adj.* mixed with extraneous matter; unchaste; unclean; dirty; not accurate or idiomatic: said of a language or style.

impurely (-li), *adv.* in an impure manner.

impureness (-nes), *n.* the quality of being impure; impurity.

impurity ('ti), *n.* *pl.* impurities (-tiz), uncleanness; a physical or moral blemish.

imputable (-pūt'ā-bl), *adj.* that may be imputed, charged, or ascribed.

imputation (-tā'shun), *n.* the act of imputing or charging; anything imputed or charged, especially in the way of discredit; censure; reproach; insinuation; the doctrine that the sin of Adam is attributed to his posterity, and the righteousness of Christ to the believer.

impute (-pūt'), *v.t.* to charge, attribute, or ascribe, especially a fault; attribute (sin or righteousness) as derived from another.

in, prefix meaning in, within, inside, not.

inadvertence (-in-ad-vērt'ens), *n.* want of attention; oversight; mistake. Also **inadvertency**.

inadvertent (-ent), *adj.* inattentive; heedless; careless; unconscious.

inalienability (-ā-lī-an-ā-bil'i-ti), *n.* the quality of being inalienable.

inalienable (-ā-bl), *adj.* that cannot, or should not, be alienated, surrendered, or transferred to another.

inalienableness (-nes), *n.* inalienability.

inalienably (-bli), *adv.* so as to be inalienable.

inamorata (-ā-mō-rā'tā), *n.* a woman with whom one is in love; sweetheart; mistress [Italian].

inamorato ('tō), *n.* a man who is in love; a lover [Italian].

inane (-ān'), *adj.* empty; void; senseless; silly; pointless; frivolous: *n.* infinite void; space.

inanimate (-in-an'i-māt), *adj.* not

animate or animated; dead; spiritless; lifeless.

inanimation (-ā-nish'un), *n.* emptiness; exhaustion from lack of nourishment.

inanity (-an'i-ti), *n.* *pl.* inanities (-tiz), emptiness; mental vacuity; frivolity: *pl.* vanities.

inappreciable (-prē'shi-ā-bl), *adj.* not to be appreciated or estimated; of no consequence.

inarch (-in-arch'), *v.t.* to graft by uniting (a scion) to a stock without separating the scion from its parent tree.

inarticulate (-in-ār-tik'ū-lāt), *adj.* not uttered with intelligible distinctness; incapable of speech; not articulated; not jointed, segmented, or valued.

inarticulately (-li), *adv.* in an inarticulate manner.

inarticulateness (-nes), *n.* indistinctness of utterance.

inasmuch (-az-much'), *adv.* in a like degree; seeing that (with *as*); because.

inaugural (-aw'gū-rāl), *adj.* pertaining to an inauguration: *n.* an inaugural address.

inaugurate (-gū-rāt), *v.t.* to induct into office with appropriate ceremonies; invest with office in a formal manner; consecrate; make a formal beginning of; initiate, as a new policy; celebrate the first public use of by some opening ceremony; dedicate, as a public building.

inaugurator (-rāt-ēr), *n.* one who inaugurates, or initiates.

inauguratory (-tō-rī), *adj.* pertaining to inauguration.

inauguratrix (-triks), *n.* a female who inaugurates.

inauspicious (-spish'us), *adj.* ill-omened; unlucky; unfavorable; unfortunate.

inbeing ('be-ing), *n.* inherent existence; inherence; inseparableness.

inboard ('bōrd), *adv.* and *adj.* within the ship; not projecting over the bulwarks.

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The British Empire Dictionary

INBOND.

419

INCHOATELY.

inbond, *adj.* a term applied to a brick laid lengthwise across a wall.
inbred, *v.t.* to breed or develop in; breed from animals closely related; breed in-and-in.
Inca, *n.* the Peruvian emperor, or a member of the royal race in Peru (which had descent from the sun) previous to Spanish conquest under Pizarro, 1531; the original Peruvian race, whose language, called Quichua, is still spoken in Sierra.
incalculable, *kū-lā-bl*, *adj.* beyond calculation.
incalculably, *-bli*, *adv.* immeasurably.
incandescence, *-kal-es-ens*, the state of glowing with heat. Also Incandescency.
incandescing, *-es-ent*, *adj.* increasing in heat.
incense, *kam-fē-a*, in a judge's chamber; used to "in open court."
in camp, same as Encamp.
incan, *adj.* pert. to the Incans of Peru.
incandescence, *-kan-des'*, *v.t.* to cause to glow with heat; *v.i.* to glow with heat.
incandescence, *-ens*, *n.* white heat. Also Incandescency.
incandescent, *-ent*, *adj.* glowing; white heat.
Incandescent Lamp, *lamp*, *n.* a lamp in which light is produced by a thin strip of non-conducting material (carbon), contained in a vacuum, and heated to incandescence by an electric current.
incandescing, *-ka-des-ent*, *adj.* presenting a glowing appearance.
incense, *-kā-nus*, *adj.* hoary with pube-
incantation, *-kan-tā'shun*, *n.* a magical charm said or sung; enchantment.
incantatory, *-tā-tō-ri*, *adj.* dealing by enchantment; magical.
incapacitate, *-kā-pas'i-tāt*, *v.t.* to deprive of faculty or natural power; render incapable or unfit; disqualify; disable.
incapacity, *-ti*, *n.* lack of power, physical or mental; legal disqualification.
incest, *kap'i-tē*, by direct grant from the crown, without any intermediate feudal prior.
incarcerate, *-kar-sēr-āt*, *v.t.* to imprison; confine.
incarceration, *-rā'shun*, *n.* imprisonment; confinement; constriction, as of a hernia.
incarcerator, *-sēr-ā-tōr*, *n.* one who incarcerates.
incarnate, *-kāt*, *v.t.* to clothe with flesh; embody in flesh; *p.adj.* embodied in flesh; flesh-colored.
incarnation, *-nā'shun*, *n.* the act

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of clothing with, or of assuming flesh; embodiment in human form; a striking exemplification or personification; the assumption of human nature by the **Son of God**; the process by which a wound heals by being filled with new flesh.
incase, same as encase.
incautious, *-kaw'shun*, *adj.* wanting in caution; not circumspect; unwary.
incavo, *-kā-vō*, the hollowed part in an intaglio or an engraved work.
incendiarism, *-sen'di-ā-rizm*, the act of an incendiary; burning; arson.
Incendiary, *'di-ā-ri*, *adj.* pertaining to arson or the malicious burning of property; tending to excite passion or violence; inflammatory; seditious; *n.* one guilty of arson; one who excites passion or violence; a seditious agitator.
incense, *(in-sens)*, *v.t.* to fire; inflame with anger; provoke; irritate; *(in-sens)*, perfume with incense; *n.* any aromatic material which exhales perfume when burned, esp. oil-banum, the frankincense of the Jews, and also of the ancient Greeks and Romans; any gratifying odor, as of flowers; homage; odour of spices and gums burned in religious rites.
incense Tree, *tree*, *n.* the name of several balsamic trees of the genus *Bursera*.
incense Wood, *wood*, *n.* wood of the *Bursera heptaphylla* of tropical America.
incensorium, *-sūr'i-um*, *n.* a censor.
incitative, *sen'tiv*, *adj.* inciting; encouraging; *n.* incitement; encouragement; motive; spur; stimulus.
inception, *-sep'shun*, *n.* reception, beginning; the formal qualification of a master of arts, previous to taking his degree.
inceptive, *-sep'tiv*, *adj.* beginning; noting beginning; *n.* an inceptive word, phrase.
incessant, *ses'ant*, *adj.* unceasing; ceaseless; continuous.
incest, *'sēt*, *n.* sexual commerce between persons related within the prohibited degrees of marriage.
incestuous, *-ses'tū-us*, *adj.* guilty of, or involving, incest.
inch, *inch*, *n.* 1-12th of a foot; a small quantity or degree; a critical moment; an island [Scott.]; *v.t.* to drive by small degrees; deal out sparingly; *v.i.* move slowly.
inchoate, *kō-āt*, *adj.* just begun; incipient; elementary; incomplete.
inchoately, *-li*, *adv.* rudimentarily.

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incarnation (-nā'shun), *n.* the act

SE 2

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The British Empire Dictionary

INCHOATIVE.

429

INCOMBUSTIBLE.

Incipiente, 'i-tiv, *adj.* incipient; rudimentary; *n.* an incipient.

Incidence, 'si-dens, *n.* the direction in which ray of light or heat falls upon a surface.

Inclined, 'si-dent, *adj.* falling upon, as a ray of light on a reflecting surface; apt to occur; appertaining; occurring accidentally; equal; subordinate; *n.* occurrence; that which happens beside the main design; quality; episode; event; accident.

Inclined, -gl, *adj.* casual; subordinate; *n.* something casual or subordinate; *pl.* minor episodes.

Inclinably, -li, *adv.* casually.

Inclinate, -sin'er-ät, *v.t.* to burn to ashes.

Inclination, -er-ä'shun, *n.* cremation.

Inclinator, 'er-ä-tör, *n.* a furnace or retort for reducing substances to ashes.

Incluse, -sip'ens, *n.* incipient state; beginning; commencement. Also **Incipit**.

Inclut, 'i-ent, *adj.* beginning to be or to appear; initial.

Incircle, same as **Encircle**.

Inced, 'süd, *p.adj.* cut; caused by cutting; engraved; notched.

Incision, -sich'un, *n.* a cut made with a sharp instrument; notch.

Incisive, -si'siv, *adj.* having the quality of cutting into; sharp; trenchant; pert. to the incisive teeth; incisorial; the incisor; the incisive edge or tooth of the mandible of a beetle.

Incisively, -li, *adv.* with incision.

Inclusiveness, -nes, *n.* the quality of being inclusive.

Inclisor, 'äsr, *n.* a cutting tooth; one of the teeth in front of the canines in both jaws.

Inclisorial, -sör'i-al, *adj.* pert. to, or having the character of, an inclisor tooth.

Inclisory, 'sör'i, *adj.* cutting.

Inclite, -sit', *v.t.* to move to action; stir up; stir on; encourage; impel.

Inclitement, 'ment, *n.* an inciting cause; incentive; impulse; encouragement.

Inclivility, -si-vil'i-ti, *n.* *pl.* Inclivities, *tit*, lack of civility or courtesy; impoliteness.

Inclasp, same as **Enclasp**.

Inclaudent, -klä'dent, *adj.* not closing.

Inclendency, -klem'en-si, *n.* *pl.* Inclendencies, -siv, want of clemency; severity of temper; storminess; adversity.

Inclément, 'ent, *adj.* not clement; unmerciful; tempestuous.

Inclination, -cli-nä'shun, *n.* a leaning; deviation from normal direction or position; tendency of the mind; disposition; a slope or declivity; slant; propensity.

Webster's New Illustrated Dictionary

inchoative ('ä-tiv), *adj.* incipient; rudimentary; *n.* an incipient.

incidence ('si-dens), *n.* the direction in which a ray of light or heat falls upon a surface.

incident ('si-dent), *adj.* falling upon, as a ray of light on a reflecting surface; apt to occur; appertaining; occurring accidentally; casual; subordinate; *n.* occurrence; that which happens beside the main design; causality; episode; event; accident.

incidental ('äl), *adj.* casual; subordinate; *n.* something casual or subordinate; *pl.* minor expenses.

incidentally ('-li), *adv.* casually.

incinerate ('sin'er-ät), *v.t.* to burn to ashes.

incineration ('er-ä'shun), *n.* cremation.

inclinator ('tr-ä-tör), *n.* a furnace or retort for reducing substances to ashes.

incluse ('süp'ens), *n.* incipient state; beginning; commencement. Also **incipiency**.

incipient ('i-ent), *adj.* beginning to be or to appear; initial.

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inclusiveness ('nes), *n.* the quality of being inclusive.

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inclitement ('ment), *n.* an inciting cause; incentive; impulse; encouragement.

inclivility ('si-vil'i-ti), *n.* *pl.* inclivities ('-tiz), lack of civility or courtesy; impoliteness.

inclendency ('klem'en-si), *n.* *pl.* inclendencies ('-siz), want of clemency; severity of temper; storminess; adversity.

inclément ('ent), *adj.* not clement; unmerciful; tempestuous.

inclination ('cli-nä'shun), *n.* a leaning; deviation from normal direction or position; tendency of the mind; disposition; a slope or declivity; slant; propensity.

incline ('klin'), *v.i.* to deviate from the normal direction or position; lean; bow; have a mental bent or tendency; be disposed; *v.t.* to cause to lean; direct; bow (as in reverence or civility); give a tendency to; turn; dispose; *n.* a slope; an inclined plane; gradient.

inclined ('-künd'), *p.adj.* having a tendency; sloping; disposed; bent into a convex curve.

inclined plane ('plän), *n.* a plane that makes an angle with the plane of the horizon; one of the mechanical powers.

inclinator ('kli-nom'e-tör), *n.* an apparatus for determining the magnetic inclination or dip; a dipping needle; clinometer.

inclose ('-klöz'), *v.t.* to shut in; encompass; surround; put into an envelope (with another letter); separate from common lands by a fence.

inclosure ('zhür), *n.* the act of inclosing, or state of being inclosed, especially the act of separating land from a common by a fence; that which is inclosed; that which incloses, as a fence; something inclosed with a letter in an envelope, as a bill, check, &c.

include ('-klüd'), *v.t.* to inclose; hold as in an inclosure; confine within something; comprise or comprehend, as a genus the species.

included ('ed), *p.adj.* inclosed; contained; not projecting beyond the mouth of the corolla of a flower.

inclusion ('-klüz'zhun), *n.* the act of including; the state of being inclosed; that which is included.

inclusive ('siv), *adj.* inclosing; including; comprehending the extremes in the sum, as from Monday to Saturday inclusive, i.e., taking in both Monday and Saturday.

inclusively ('-li), *adv.* so as to include.

incognito ('-kog'ni-tö), *adj.* unknown or disguised; *adv.* in disguise; under an assumed name; *n.* a great personage who travels under an assumed style; the assumption of a character or title to avoid recognition; state of being unrecognized. *From* incognita.

incoherence ('-kö-hir'ens), *n.* want of cohesion; looseness; want of connection; incongruity; inconsequence. *Incoherency*.

incoherent ('ent), without cohesion; incongruous; incohesive.

incohesion ('-hö'zhun), *n.* want of cohesion.

incombustible ('-kom-bus'ti-bl'), *adj.* that cannot be consumed by fire; *n.* an incombustible substance.

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The British Empire Dictionary

INCOME. 421
income, 'kum, *n.* the gain which proceeds from labour, business, property, or capital; annual receipts of a person or corporation.
incomer, 'kum-ér, *n.* one who comes in; one who succeeds another as a tenant.
incoming, 'kum-ing, *p.adj.* coming in; accruing; *n.* the act of coming in; that which comes in; income.
incommensurability, -kom-men-sú-rá-bil'i-ti, *n.* the quality or state of being incommensurable. Also **Incommensurableness**.
incommensurable, 'sú-rá-bil, *adj.* having no common measure; having no common divisor except unity; *n.* one of two (or more) quantities that have no common measure.
incommensurate, 'rát, *adj.* not admitting of a common measure; incommensurable; not sufficient in measure; inadequate.
incommensurately, -li, *adv.* not in equal or due measure.
incommode, -kom-ód, *v.t.* to give inconvenience or trouble to; disturb.
incommodious, 'tus, *adj.* tending to incommode; troublesome; inconvenient.
incommunicable, -mú-ni-ká-bil, *adj.* that cannot be communicated or told.
comparable, -kom-pá-rá-bil, *adj.* not admitting of comparison; unequalled; transcendent; peerless.
comparableness, -nes, *n.* excellent beyond comparison.
comparably, -bil, *adv.* beyond comparison.
compatibility, -pat-i-bil'i-ti, *n.* irreconcilableness. Also **Incompatibleness**.
compatible, 'i-lá, *adj.* incapable of harmonious subsistence or combination; inconsistent; incongruous: *n.pl.* persons or things irreconcilably disagreeing with each other.
compatibly, -bil, *adv.* in an *f.* manner.
competence, -kom-pe-tens, *n.* inability, physical, intellectual, or moral; insufficiency; inadequacy; lack of qualification or jurisdiction. Also **Incompetency**.
competent, 'pe-tent, *adj.* wanting ability; inadequate; wanting qualification or fitness; incapacitated; inadmissible.
complete, 'plét, *adj.* not fully finished or developed; not having all its parts; imperfect; defective.
completely, -li, *adv.* imperfectly.
completeness, -nes, *n.* imperfection.
comprehensibility, -pre-hen'si-bil, *adj.* fathomable; not to be understood or grasped by the mind; inconceivable.
compressible, -pres'i-bil, *adj.* incapable of being reduced in volume by pressure; resisting pressure.

INCONTINENCE.
inconceivability, -kon-sév-á-bil'i-ti, *n.* the quality of being inconceivable.
inconceivable, 'á-bl, *adj.* incapable of being conceived or imagined; incredible.
inconceivably, -bil, *adv.* beyond the power of conception.
inconclusive, -kloo'siv, *adj.* leading to no conclusion in evidence or argument; unconvincing; reaching no definite result in action; ineffective; inefficient.
inconclusively, -li, *adv.* in an *f.* manner.
incondensable, -den'si-bil, *adj.* incapable of being made more dense or compact, or of being reduced to liquid form.
incongruity, -gróo'i-ti, *n.*; *pl.* **Incongruities**, -tiz, want of mutual fitness; unsuitableness of one thing to another.
incongruous, 'gróo-us, *adj.* reciprocally disagreeing; unsuited to one another; inharmonious; inappropriate.
inconna, -nú, *adj.* unknown: *n.* an unknown person. *Fem.* **Inconnue** [Fr.].
Inconsequence, 'se-kwens, *n.* the quality of being inconsequent; want of logical sequence; inconclusiveness.
Inconsequent, -kwent, *adj.* not following from the premises; illogical; out of proper relation; irrelevant.
Inconsiderable, -sid'é-r-á-bil, *adj.* not deserving consideration; unimportant.
Inconsiderably, -bil, *adv.* very little.
Inconsiderate, -sid'é-r-át, *adj.* without consideration; thoughtless.
Inconsiderately, -li, *adv.* thoughtlessly.
Inconsistency, -sis'ten-si, *n.*; *pl.* **Inconsistencies**, -siz, the quality of being inconsistent; incongruity.
Inconsistent, 'tent, *adj.* lacking coherence or agreement; discrepant; lacking uniformity; self-contradicting; incongruous.
Inconsolable, 'sú-lá-bil, *adj.* not to be consoled or comforted.
Inconsolably, -bil, *adv.* in an inconsolable manner or degree.
Inconspicuous, -spik'ú-us, *adj.* not easily perceived; so small as to escape notice; hardly discernible.
Inconstancy, 'stán-si, *n.* changeableness.
Inconstant, 'stán, *adj.* subject to change; unstable; variable; fickle; capricious.
Incontestable, -test'á-bil, *adj.* not admitting of question or dispute; incontrovertible.
Incontestably, -bil, *adv.* indisputably.
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NERVE

519

NEWFOUNDLAND.

nerve, *n.* one of the grey fibres which convey sensation from all parts of the body to the brain and originate motion; tendon; sinew; strength; manliness; the strong vein of a leaf; *v.t.* to invigorate or strengthen.

nerve, *n.* a tonic for the nerves.

nerve, *adj.* pert. to, or composed of, nerves; having weak nerves; easily agitated; vigorous in style.

nerve, *ur*, *n.* the veins of leaves; the horny ribs supporting the membranous wings of an insect.

nerve, *n.* a headland or cape.

nest, *n.* the bed or dwelling chosen by a bird for incubation, and the rearing of its young; the place where eggs are laid and hatched; a cosy residence; a number of boxes one fitting inside another: *v.t.* to build and occupy a nest.

nest-egg, *eg*, *n.* an egg left in the nest to keep the hen from forsaking it; money forming a nucleus.

nestle, *nest*, *v.t.* to lie close and snug; take shelter: *v.t.* to cherish.

nestling, *ling*, *n.* a young bird in the nest or just taken from it: *adj.* recently hatched.

nestorian, *torian*, *adj.* pert. to one of a 5th cent. sect founded by Nestorius, Bishop of Constantinople, who taught that there were two natures in Christ, one human and one divine, which did not unite and form one person: also that the Virgin Mary was not the Mother of God.

net, *n.* an instrument of twine knotted into meshes for catching birds, fish, &c.; anything resembling or made like a net; a snare: *adj.* clear of all charges or deductions: opposed to Gross: *v.t.* *p.p.t.* & *p.p.* netted, *p.p.r.* netting, to make into a net or network; take with a net; snare; produce as clear profit: *v.t.* to form network.

net, *net*, *adj.* lying beneath; lower; belonging to the regions below.

net, *net*, *n.* a kind of toggle for fastening the front of a garment [Jap].

nettle, *net*, *n.* a stinging plant of the genus *Urtica*: *v.t.* to provoke or irritate.

nettles, *net*, *n.* a cutaneous eruption resembling the effects of a nettle sting.

net, *n.* a tonic for the nerves.

neuralgia, *ral*, *n.* acute pain in a nerve.

neuralgia, *jal*, *adj.* pert. to neuralgia.

neurasthenia, *ras-then-ia*, *n.* brain and nerve exhaustion, as from influenza, &c.

neurasthenia, *ras-shun*, *n.* the venation of the wings of an insect; nerve distribution.

neurilemma, *ri-lem-a*, *n.* the fibrous sheath of a nerve.

neurine, *rin*, *n.* nerve matter. Also **Neurin**.

neuritis, *ri-tis*, *n.* inflammation of a nerve.

Neuro, a prefix meaning *nerve*, as **neurography**, a treatise on the nerves.

Neuroglia, *rog-li-a*, *n.* the delicate connective tissue between the nerve-fibres of the brain and spinal cord.

Neurology, *rol-o-ji*, *n.* a scientific description of the nerves.

Neuroma, *ro-ma*, *n.* a fibrous tumour occurring in a nerve trunk.

Neuropathic, *path-ik*, *adj.* pert. to, or suffering from, nervous disease; affecting the nerves.

Neuroptera, *ter-a*, *n.* an order of insects characterised by four transparent, finely reticulated, membranous wings.

Neurosis, *ro-sis*, *n.* nervous disease.

Neurotic, *rot-ik*, *adj.* pert. to, seated in, or affecting, the nerves; characterised by a morbid hysterical style: *n.* a nerve tonic.

Neurotomy, *o-mi*, *n.* dissection of the nerves.

Neuter, *ter*, *adj.* of neither sex; intransitive: *n.* a flower having neither pistil nor stamens; a sterile sexless insect, esp. the working bee.

Neutral, *tral*, *adj.* unbiassed; indifferent; taking no part on either side in a contest; neither very good nor very bad; neither acid nor alkaline: said of chemical salts.

Neutrality, *ti*, *n.* the state of being neutral.

Neutralise, *tral-iz*, *v.t.* to make neutral; *v.t.* to render inactive.

Neutrally, *tral-li*, *adj.* in a neutral manner.

Neutral Tint, *tint*, *n.* a dull grey.

Névé, *na-vé*, *n.* the granular compressed snow which forms glacier ice.

Never, *nev'er*, *adv.* not at any time; in no degree.

Nevertheless, *-the-less*, *adj.* notwithstanding; in spite of that.

New, *n.* *adj.* recent in origin; modern; novel; lately made, produced, invented, or discovered; recently entered upon or commenced; not previously used; fresh.

[N.B.—New forms the first element in many compound words: the sense is usually self-evident, as new-fashioned, &c.]

Newel, *el*, *n.* in a winding staircase, the central upright pillar around which the steps turn.

New-fangled, *fang-geld*, *adj.* new-fashioned.

Newfoundland, *-found-land*, *n.* large variety of dog, orig. from Newfoundland.

Webster's New Illustrated Dictionary

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The British Empire Dictionary

STEAL

704

STENOGRAPH

steal, *v.t.*, *pret.* stole, *p.p.* stolen, *p.pr.* stealing, to take by theft or feloniously; to leave without leave or right; withdraw or convey clandestinely; gain secretly and gradually: *v.i.* to commit theft; slip in and out unperceived.

stealth, *n.* secret means employed to accomplish an object; underhand procedure.

stealthily, *adv.* in a stealthy manner.

stealthiness, *n.* the state or quality of being stealthy.

stealthy, *adj.*, *comp.* stealthier, *superl.* stealthiest, done or performed by stealth; clandestine; sly.

steam, *n.* vapour into which water is changed when heated to boiling-point; vapour; any exhalation: *v.i.* to emit steam; rise or pass off in steam; move by steam: *v.t.* to apply steam to.

Steam, *n.* Many compound words have **Steam** as the first element: the sense is usually self-evident, as *steam-engine*, &c.

steamer, *n.* a vessel propelled by steam; and locomotive; an apparatus for steaming articles.

steamiest, *adj.* the state or quality of being steamy; mistiness.

steamy, *adj.* consisting of, or like, steam.

stearate, *n.* any salt of stearic acid.

stearic, *adj.* pert. to, or obtained from stearin.

stearin, *n.* a constituent of most animal and some vegetable fats; tallow.

stearite, *n.* a soapstone.

steed, *n.* a horse, esp. one which is ridden.

steel, *n.* iron refined and combined with carbon; any instrument of steel; anything made of steel; anything of extreme hardness; a chalybeate medicine: *adj.* made of, or resembling, steel: *v.t.* to overlay, edge, or tip with steel; make and or invulnerable; render like steel.

Steel, *n.* Various compound words have **Steel** as an element: the sense is usually self-evident, as *steel-plated*, *cast-steel*, &c.

steeliness, *n.* the state or quality of being steely.

steeling, *n.* the process of overlaying, edging, or pointing with steel; acierage.

steely, *adj.* made of, or like, steel; hard; flexible; coloured like steel.

steelyard, *n.* a kind of balance, consisting of a single weight moved along a graduated beam.

stening, *n.* a lining of stone, brick, &c., of a well or similar structure.

steep, *adj.* rising or descending with great inclination; precipitous: *n.* a precipitous place: *v.t.* to soak in a liquid; dip; imbue.

steepen, *n.* *v.i.* to become steep or steeper.

steepie, *n.* a tower or turret, tapering to a point; spire.

steepie-chase, *n.* a kind of cross-country horse-race.

steepied, *adj.* furnished with, like, or adorned with, a steepie.

steer, *n.* a young male of the ox kind; bullock: *v.t.* to castrate, said of calves; to direct the course of a vessel with the helm; control; guide: *v.i.* to direct a ship in its course; move; be governed.

steerage, *n.* the act or practice of steering; that part of a ship allotted to the poorer passengers.

steerage-way, *n.* a rate of motion through the water of a vessel sufficient to enable her to feel the effect of the helm.

steers, *n.* *v.t.* to give a certain angle of elevation to the bowsprit of a vessel.

steering, *n.* the angle of elevation of a bowsprit with the horizon.

steganography, *n.* a system of writing in cipher; cryptography.

stegnosis, *n.* constipation.

Steinbock, *n.* a small antelope of S. Africa. Also **Steinbock**.

Stela, *n.* a small column without capital or base. Also **Stele**.

stellar, *adj.* pert. to stars; astral; starry. Also **Stellary**.

stellate, *adj.* star-like; radiated.

stelliform, *adj.* star-shaped.

stellular, *adj.* radiated.

stem, *n.* the principal axis of a tree or plant; anything resembling a stem; race; pedigree; progeny; branch of a family; the forepart of a vessel; the unchangeable part of an inflected word; the upright or downright line joined to the body of a note [Mus.]: *v.t.*, *pret.* & *p.p.* stemmed, *p.pr.* stemming, to resist or check; dam up: *v.i.* to move forward against an obstacle.

Stemple, *n.* a crossbar of wood in a mining-shaft for ascending and descending.

Stench, *n.* a strong offensive odour.

Stencil, *n.* a thin plate of metal with a pattern, &c., cut out, used for marking, &c.: *v.t.*, *pret.* & *p.p.* stenciled, *p.pr.* stencilling, to mark or colour with a stencil.

Stenograph, *n.* writing in shorthand.

v.t. to write or report in shorthand.

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stenograph (*stēn-ō-grāf*), *n.* writing in shorthand: *v.t.* to write or report in shorthand.

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TENSOR

736

TERN

al strain; strong excitement of feeling; expansive or elastic force.

ter, *n.* a muscle that stretches.

tent, *n.* a temporary shelter or habitation, usually of canvas, supported by poles or ropes; Rechabite lodge; plug or roll of lint for dilating a wound, &c.; a variety of sacramental wine.

tle, 'a-kl, *n.* a process or organ in an invertebrate animal used for prehension, or locomotion.

ular, -ak'ü-lär, *adj.* pert. to tentacles.

ulum, -ü-lum, *n.*; *pl.* Tentacula, -lä, -tacle.

tive, 'tä-tiv, *adj.* experimental.

tively, -li, *adv.* by experiment.

ter, 'tär, *n.* a frame for stretching cloth by hooks; a tenter-hook: *v.t.* to hang stretch on tenters.

hook, -hook, *n.* a sharp, hooked anything that painfully strains.

th, *adj.* next in order after the ninth; ordinal of ten.

ty, -ü-ti, *n.* thinness; rarity.

us, 'ü-us, *adj.* slender; not dense.

ür, 'ür, *n.* conditions under which a ment is held; right or manner of hold- real estate; manner of holding.

ö, 'tä-nööt'ö, *adj.* noting a note or as to be sustained [Mus.].

ll, 'të-ö-kal', *n.*; *pl.* Teocallis, -iz, a sided structure of pyramidal form, mounted by a temple, used by the ent Mexicans.

action, tep-e-fak'shun, *n.* the act of ning or making tepid.

y, 'e-ti, *v.t.*, *prep.* & *p.p.* tepified, *p.pr.* tepying., to make or become tepid.

'id, *adj.* moderately warm.

ty, 'të-pid'i-ti, *n.* moderate warmth. Tepidness.

prefix meaning three times.

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ology, -ä-to'l'ö-ji, *n.* that branch of gy which treats of malformations or ations from the normal type of animal plant structure.

same as Tierce.

'sel, *n.* the male of the falcon. Tassel.

tenary, -sen'ten-ä-ri, *adj.* comprising years: *n.* a day or function com- orating some event occurring 300 s before.

'set, *n.* a third [Mus.].

Tercine, 'sin, *n.* the outer coat of the ovule of a plant; chorion.

Terebinth, 'e-binth, *n.* the turpentine-tree.

Terebinthine, -bin'thin, *adj.* pert. to, of the nature of, or like, turpentine.

Terebratula, -brat'ü-lä, *n.*; *pl.* Terebra- tula, -lä, a genus of deep-sea, brachiopods.

Teredo, 'e-dö, *n.*; *pl.* Teredos, -dös, a genus of slender, worm-like, bivalve molluscs which bore into submerged wood, esp. the ship-worm (*T. Navalis*).

Tergant, 'gant, *adj.* in heraldry, showing the back. Also Tergiant.

Tergiversation, -giv-ër-sä'shun, *n.* evasion; subterfuge.

Tergum, 'gum, *n.* the upper surface of the abdomen of insects.

Term, term, *n.* a limit or boundary; limited time: subject or predicate of a proposition, number of a compound mathematical quantity; expression; condition or arrangement; word or expression noting something peculiar to an art or science; time during which the law courts are open; time during which instruction is given in universities, schools, &c.; time when rent is paid [Scot.]; *pl.* conditions or stipulations: *v.t.* to name, designate, or express.

Termagant, 'mä-gant, *adj.* noisy and violent: *n.* a noisy, violent woman.

Termes, 'mex, *n.*; *pl.* Termites, -mi-tex, a genus of insects including the white ants.

Terminal, 'min-al, *adj.* pert. to the end or extremity; arranged according to the terminations: *n.* a limit or boundary; end; one of the ends of a conducting circuit of a dynamo, &c.

Terminalla, -ä-lä-a, *n. pl.* a festival held by the ancient Romans, Feb. 23, in honour of Terminus, the god of boundaries.

Terminate, 'mi-nät, *v.t.* to limit or bound; end: *v.i.* to be limited or ended.

Termination, -nä'shun, *n.* the act of terminating; a bound or limit; end; conclusion or result; final syllable or letter.

Terminator, 'mi-nä-tör, *n.* one who or that which terminates; the dividing line between the illuminated and non-illuminated part of the moon.

Terminology, -mi-nol'ö-ji, *n.* the definition of technical terms.

Terminus, 'mi-nus, *n.*; *pl.* Termini, -ni, a limit or boundary; station at the end of a railway; the god of the ancient Romans who presided over boundaries.

Termite, 'mit, *n.* the white ant.

Tern, term, *n.* an aquatic bird allied to the gull: *adj.* three fold, consisting of three.

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stretched; mental strain; strong excitement of feeling; expansive or elastic force.

tensor ('sär), *n.* a muscle that stretches.

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TERMINARY.

737

TESTIMONIAL.

ternary, tēr'nā-rī, *adj.* proceeding by, or consisting of, threes: *n.* the number 3.
terpichorean, tērp-sik'ō-rē-an, *adj.* pert. to Terpsichore or to dancing.
terra, tēr'ā, *n.* the earth; earth.
terrace, tēr'ās, *n.* a raised level space or platform of earth with sloping sides, usually laid with turf; flat roof on an oriental house; large open balcony or gallery; row of houses: *v.t.* to form into a terrace.
terra cotta, kot'ā, *n.* a composition of fine clay and sand used for statues, &c., and hardened by heat; a work of art executed in terra cotta.
terra Japonica, jā-pon'e-ka, *n.* catechu.
terrapin, tēr'ā-pin, *n.* a species of fresh-water tortoise, much esteemed for food.
terraqueous, tēr'ā-kwe-us, *adj.* consisting of land and water.
terrestrial, tēr'ā-trī-āl, *adj.* pert. to, existing on, or consisting of, earth; belonging to the present world; not celestial.
terrestrially, -lī, *adv.* in a T. manner.
terret, tēr'et, *n.* one of the rings on the saddle through which the driving reins pass.
terra Verta, tēr vērt, *n.* a name for two kinds of green pigments used by artists.
terrible, tēr'ī-bl, *adj.* exciting or causing fear or awe; dreadful; extreme; severe.
Terribleness, -nes, *n.* dreadfulness.
Terribly, -blī, *adv.* violently; dreadfully.
terrier, tēr'ēr, *n.* a breed of small dogs; a roll or enumeration of a landed estate, describing its acreage, boundaries, &c.
terrify, tēr'ī-fī, *v.t. & p.p.* terrified, *p.p.* terrifying, to frighten or alarm exceedingly.
territorial, tēr'ī-tō-rī-āl, *adj.* pert. to a territory; limited to a particular district.
territorially, -lī, *adv.* as regards territory.
territory, tēr'ī-tō-rī, *n.* *pl.* Territories, -rīz, the extent of land within the jurisdiction of a state, sovereign, city, &c.; large tract of land; portion of country not yet admitted as a state [U.S.].
Terror, tēr'or, *n.* extreme fear; fright; one who excites extreme fear.
Terrorism, -izm, *n.* a system of government by terror; intimidation.
Terrorist, -ist, *n.* one who governs by terror, esp. an agent of the revolutionary tribunal during the Reign of Terror in France.
terrorise, -īz, *v.t.* to intimidate or coerce by terror.
Terry, tēr'ī, *n.* a heavy corded pile fabric.
terracotta, sangk'tus, *n.* the ascription of praise "Holy, Holy, Holy," introductory to the consecration prayer in the Holy Communion office.

Terse, tērs, *adj.* elegantly or neatly concise.
Tersely, -lī, *adv.* in a terse manner.
Terseness, -nes, *n.* quality of being terse.
Tertian, tēr'shān, *adj.* occurring, or recurring, every third day: *n.* an intermittent fever the paroxysms of which recur every other day.
Tertiary, tēr'shī-ā-rī, *adj.* of the third order, rank, or formation; pert. to a series of strata overlying the chalk: *n.* an associate of a monastic order.
Tessellate, tes'el-āt, *v.t.* to lay with squares or chequered work.
Tessera, tēr'ā, *n.* *pl.* Tesserae, -rē, a cube of marble, glass, &c., used in mosaic work.
Test, tēst, *n.* anything by which the nature of a substance is tried; examination by a cupel; standard; discrimination; proof: *v.t.* to put to the proof; compare with a standard; try; refine in a cupel; examine or try by means of a re-agent.
Testa, tēs'tā, *n.* *pl.* Testes, -tē, the outer integument or covering of a seed; shelly covering of certain animals.
Testaceous, tēs'tā-shus, *adj.* consisting of, or having, a hard shell.
Testacy, tēs'tā-sī, *n.* the state or fact of leaving a valid will.
Testament, tēs'tā-ment, *n.* a solemn, authentic instrument in writing disposing of the estate of a person deceased; will: one of the two great divisions of the Bible.
Testamentary, tēs'tā-ment-ā-rī, *adj.* pert. to, bequeathed by, or done by, a will. Also Testamental.
Testamur, tēs'tā-mēr, *n.* a certificate of merit or proficiency in passing an examination.
Testate, tēs'tāt, *adj.* having left a will.
Testator, tēs'tā-tōr, *n.* one who makes and leaves a will. *Fem.* Testatrix.
Tester, tēr'tēr, *n.* an old English coin, value 6d.; a flat canopy; one who tests.
Testes, tēs'tēs, *n. pl.* the testicles.
Testicle, tēs'tī-kl, *n.* one of the two glands which secrete the seminal fluid in males.
Testify, tēr'ī-fī, *v.i. & p.p.* testified, *p.p.* testifying, to bear witness; make a solemn declaration; give evidence: *v.t.* affirm or declare solemnly on oath; bear witness to.
Testily, tēs'tī-lī, *adv.* in a testy manner.
Testimonial, tēs'tī-mō-nī-āl, *n.* a writing or certificate bearing testimony to character, proficiency, &c.; a present given as a token of respect; acknowledgment of services rendered, &c.: *adj.* pert. to, or containing testimony.

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The British Empire Dictionary

TESTIMONY.

738

THAN.

testimony, tĕs'tĭ-mō-ni, *n.* ; *pl.* Testimonies. *adj.* evidence; proof; solemn declaration; profession; the two tables of the Law; divine revelation.

testiness, tĕs'tĭ-nĕs, *n.* peevishness.

testing, tĕs'tĭng, *n.* the operation of refining gold and silver; assay; proof; trial.

testis, tĕs'tĭs, *n.* ; *pl.* Testes, tĕz, a testicle.

tetradial, tĕt'rā-dĭ-āl, *adj.* tortoise-like.

tetradinate, tĕt'rā-dĭ-nāt, *adj.* arched like a tortoise's shell.

tetradop, tĕt'rā-dōp, *n.* ; *pl.* Tetradines, tĕt'rā-dĭ-nĕz, a protective covering used by the ancient Roman soldiers in besieging a city, by overlapping their shields; an encysted armour; a genus of land tortoises.

testy, tĕs'tĭ, *adj.*, *comp.* testier, *superl.* testiest, peevish; morose; irritable.

teanus, tĕt'rā-nus, *n.* lockjaw.

techy, same as Techy.

tête-à-tête, tăt-ä-tăt', *n.* private or confidential conversation; a kind of settee.

tête-de-pont, tĕt'-dĕ-pōng', *n.* ; *pl.* Tĕtes-de-pont, -pōng', a work thrown up to defend the entrance of a bridge.

tether, tĕt'hĕr, *n.* a rope for confining an animal within certain limits; scope or freedom allowed: *v.t.* to confine, as an animal, within certain limits.

tetra, a *prefix* meaning four, as *tetra-branchiate*, *adj.* having 4 branchiae or gills.

tetrabranchiate, tĕt'rā-brāng-kĭ-ä'tä, *n. pl.* an order of Cephalopoda, having 4 gills.

tetrachord, tĕt'rā-kōrd, *n.* half of the octave scale [Mus.].

tetrad, tĕt'rād, *n.* the number 4; collection of 4 things; tetravalent radical or element.

tetragon, tĕt'rā-gon, *n.* a plane figure with 4 sides and 4 angles.

tetragrammaton, grām'ä-ton, *n.* the mystic number 4 symbolical among the ancient Jews of the Deity.

tetrahedral, tĕt'rā-drāl, *adj.* four-sided.

tetrahedron, tĕt'rā-dron, *n.* a solid figure bounded by 4 triangles.

tetrameter, tĕt'-tram'e-tĕr, *n.* a verse or line consisting of 4 measures.

tetramorph, tĕt'rā-mōrf, *n.* the union of the symbols of the 4 Evangelists in one figure.

tetrapla, tĕt'rā-plā, *n.* an edition of the Scriptures in 4 versions arranged in parallel columns.

tetrapod, tĕt'rā-pod, *n.* a four-footed insect.

tetrarch, tĕt'rärk, *n.* a Roman Governor whose jurisdiction extended over the fourth part of a province; petty prince.

Tetrarchate, tĕt'rärk, *n.* the office or jurisdiction of a tetrarch. Also Tetrarchy.

Tetrastyle, tĕt'rā-stĭl, *n.* a building or portico with 4 columns in front.

Tetter, tĕt'r, *n.* a cutaneous disease characterized by itching and redness; herpes.

Teuton, tū'ton, *n.* one of the German race.

Teutonic, tĕk, *adj.* pert. to, or characteristic of, the Teutons or the Teutonic languages, Low German, Scandinavian, and High German.

Teutonic Knights, nĭts, *n. pl.* a religious military order founded 12th cent.

Teutonism, tĕn-izm, *n.* a Germanism.

Texas, tĕks'as, *n.* the pilot house, &c., on the hurricane deck of a steamer [U.S.].

Text, tĕkst, *n.* that on which a comment is written; original words of an author; verse, &c., of Scripture forming the subject of a sermon; topic; theme for composition, argument, &c.; text-hand.

Text-book, tĕk'st, *n.* a standard book of instruction.

Text-hand, hand, *n.* a large hand in writing.

Textile, tĕks'tĭl, *adj.* pert. to, or formed by, weaving; capable of being woven.

Textual, tĕt'-u-āl, *adj.* pert. to, contained in, or serving for, a text.

Texture, tĕt'r, *n.* manner of weaving; web; disposition of the several parts of a body in connection with each other; filaments or fibres interwoven; tissue.

Thalamus, thāl'ä-mus, *n.* the place where a nerve originates or is supposed to originate; receptacle of a flower.

Thalassic, thā-las'ĭk, *adj.* pert. to, or formed in, the sea.

Thalassography, thal-as-og'rā-fĭ, *n.* the science of marine organisms.

Thaler, täl'ĕr, *n.* a German silver coin, value about 3s.

Thalian, thā-lĭ'an, *adj.* pert. to Thalia, the muse who presided over pastoral poetry and comedy; hence comic.

Thallium, thāl'i-um, *n.* a rare metallic element.

Thallochlore, tĕ-klor, *n.* the green colouring matter of lichens.

Thallogen, tĕ-jen, *n.* a large class of cellular flowerless plants, containing the fungi, algae, lichens, &c.

Thalloid, tĕd, *adj.* thallus-like.

Thallus, tĕs, *n.* a substance of various forms composed of cellular tissue, forming the substance of thallogens.

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THANAGE

739

THEODOLITE

thane, thán'j, *n.* the district or jurisdiction of a thane.

thanatoid, thán'a-toid, *adj.* death-like.

thanatology, -a-tol'ô-jî, *n.* a treatise on, or a doctrine of, death.

thane, thán, *n.* a title of honour or dignity among the Anglo-Saxons, held by persons having large territorial possessions.

thanship, 'ship, *n.* the dignity, state, or property of a thane.

thank, thangk, *v.t.* to express gratitude or obligation.

thankful, 'ful, *adj.* grateful.

thankfully, -ly, *adv.* gratefully.

thankless, 'les, *adj.* ungrateful; not obtaining or deserving thanks.

thanks, thangk, *n.pl.* an expression of gratitude or obligation.

thanksgiving, thangk's-giv-ing, *n.* the act of expressing gratitude for favours and mercies; a public celebration of divine goodness; a day so set apart.

Thanksgiving Day, dâ, *n.* a day set apart annually, usually in November, for thanksgiving to God for national mercies [U.S.].

that, thât, *pron. & adj., pl.* Those, thôz, not *but* the other: *conj.* because; since.

thatch, thach, *n.* straw, reeds, &c., used for covering the roofs of cottages, stacks, &c.; *v.t.* to cover with, or as with, thatch.

thaumatrope, thâ'mâ-trôp, *n.* an optical toy for showing the persistence of an impression on the eye after the luminous object is withdrawn.

thaumaturgic, -têr'jik, *adj.* pert. to, or effected by, thaumaturgy: *n.* legerdemain; magical feats.

thaumaturgy, 'mâ-têr-jî, *n.* the act of performing miracles; legerdemain; magic.

thaw, thâ, *v.i.* to melt or become liquid, as ice or snow; become milder or more genial: *v.t.* to dissolve: *n.* the melting of ice or snow by rise of temperature.

tea, thê'a, *n.* the tea plant.

theatre, 'â-têr, *n.* a public building where dramatic representations are given; large hall arranged for lectures, anatomical demonstrations, &c.; scene or sphere of action.

theatrical, -at'ri-kal, *adj.* pert. to, or adapted for, a theatre, or scenic representations; resembling the manner of actors; histrionic, pompous: *n.pl.* dramatic performances.

theatrically, -ly, *adv.* in a manner adapted to the stage.

theatine, thê'a-trin, *n.* one of an order of Italian monks founded 16th cent.

Theatrophone, 'rô-fôn, *n.* an automatic telephone connected with a theatre by which a person may hear a dramatic performance while seated at home.

Theave, thêv, *n.* a ewe lamb of the first year.

Thebaine, thê-bâ'in, *n.* a poisonous alkaloid found in opium. Also Thebin.

Theban, 'ban, *adj.* pert. to Thebes, or to its inhabitants.

Theban Year, yêr, *n.* the ancient Egyptian year consisting of 365 days, 6 hours.

Theca, 'kâ, *n.* a sheath; seed-case of a fern.

Thee, thê, *pron.* objective case of Thou.

Theft, theft, *n.* the act of stealing; robbery.

Theine, 'in, *n.* the bitter and volatile principle of tea, identical with caffeine in coffee.

Theirs, thêrs, *pron. pl.* possessive case of They.

Theism, thê'izm, *n.* the belief in the existence of a God: opposed to Atheism.

Theist, 'ist, *n.* one who believes in the existence of a God: opposed to Atheist.

Theistic, 'ik, *adj.* pert. to theism or theists. Also Theistical.

Them, them, *pron.* the objective case of They.

Theme, thê'm, *n.* the subject or topic of a discourse or dissertation; short essay on a given subject; radical of a noun or verb; series of notes selected as the subject of a new composition [Mus.].

Then, then, *conj.* in consequence; therefore; in that case; *adv.* next; at that or another time; immediately.

Thence, thêns, *adv.* from that place & time.

Theobroma, thê-ô-brô'ma, *n.* a genus of tropical trees producing the cacao or chocolate-nut.

Theobromine, 'min, *n.* an alkaloid contained in the chocolate-nut.

Theocracy, -ok'râ-si, *n.* the government of a state by the immediate direction of God; the state thus governed.

Theocracy, 'râ-si, *n.* a mixture of the worship of different deities, as of God and idols; the intimate union of the soul with God in contemplation.

Theocrat, 'ô-krat, *n.* one living under theocracy.

Theocratic, -krat'ik, *adj.* pert. to a theocracy; administered by the immediate direction of God.

Theodicy, -od'i-si, *n.* a vindication of the dealings of divine Providence, and the freedom of the human will.

Theodolite, -od'ô-lit, *n.* an instrument for measuring horizontal and vertical angles and ascertaining distances and heights.

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thaw (thaw), *v.i.* to melt or become liquid, as ice or snow; become milder or more genial: *v.t.* to dissolve; *n.* the melting of ice or snow by rise of temperature.

tea (thê'a), *n.* the tea plant.

theater, theatre ('â-têr), *n.* a public building where dramatic representations are given; large room arranged for lectures, anatomical demonstrations, &c.; scene or sphere of action.

theatrical (-at'ri-kâl), *adj.* pertaining to, or adapted for, a theater, or scenic representations; resembling the manner of actors; histrionic, pompous: *n.pl.* dramatic performances.

theatrically (-li), *adv.* in a manner adapted for the stage.

theatrophone ('rô-fôn), *n.* an automatic telephone connected with a theater by which a person may hear a dramatic performance while seated at home.

thebaine ('bâ-in), *n.* a poisonous alkaloid found in opium. Also thebin.

Theban ('bân), *adj.* pertaining to Thebes, or to its inhabitants.

Theban Year (yêr), *n.* the ancient Egyptian year consisting of 365 days, 6 hours.

theca ('kâ), *n.* a sheath; seed-case of a fern.

thee (thê), *pron.* objective case of thou.

theft (theft), *n.* the act of stealing; robbery.

theine (thê'in), *n.* the bitter and volatile principle of tea, identical with caffeine in coffee.

Theirs (thêrs), *pron.pl.* possessive case of they.

theism (thê'izm), *n.* the belief in the existence of a God: opposed to atheism.

theist ('ist), *n.* one who believes in the existence of a God: opposed to atheist.

theistic ('ik), *adj.* pertaining to theism or theists. Also theistical.

them (them), *pron.* the objective case of they.

theme (thê'm), *n.* the subject or topic of a discourse or dissertation; short essay on a given subject; radical of a noun or verb; series of notes selected as the subject of a new composition [Music].

then (then), *conj.* in consequence; therefore; in that case: *adv.* next; at that or another time; immediately.

thence (thêns), *adv.* from that place or time.

theobromine (thê-ô-brô'min), *n.* an alkaloid contained in cacao-beans.

theocracy (-ok'râ-si), *n.* the government of a state by the immediate direction of God; the state thus governed.

theocracy ('râ-si), *n.* a mixture of the worship of different deities, as of God and idols; the intimate union of the soul with God in contemplation.

theocrat ('ô-krat), *n.* one living under a theocracy.

theocratic ('krat'ik), *adj.* pertaining to a theocracy; administered by the immediate direction of God.

theodicy (-od'i-si), *n.* a vindication of the dealings of divine Providence, and the freedom of the human will.

theodolite (-od'ô-lit), *n.* an instrument for measuring horizontal and vertical angles and ascertaining distances and heights.

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The British Empire Dictionary

THEODOLITE.

760

THEWS.

theodolite, -līt'ik, *adj.* pert. to, or ascertained by means of, the theodolite.

theogony, -og'ō-nī, *n.* that branch of mythology which treats of the origin or genealogy of ancient deities; a poem treating of such genealogies.

theologian, -ō-lō'jī-an, *n.* one versed in theology; professor of divinity; a divine.

theological, -lōj'ī-kāl, *adj.* pert. to theology.

theology, -ol'ō-jī, *n.* *pl.* Theologies, -jīz, the science that treats of the existence, nature, and attributes of God, esp. of man's relations to God; divinity.

theophany, -of'ā-nī, *n.* a manifestation of God to man by actual appearance.

thermo, -ōr-bō, *n.* a kind of large lute with two necks.

theorem, -ō-rem, *n.* a proposition to be proved.

theretical, -ō-ret'ī-kāl, *adj.* pert. to, or depending on, theory; not practical; speculative. Also Theoretic.

theretically, -lī, *adv.* in or by theory.

theoretics, 'īks, *n. pl.* the speculative part of science.

theorist, -ō-rīst, *n.* one who theorizes; speculatist.

theorize, -ō-rīz, *v. i.* to form a theory or theories; speculate.

theory, 'ō-rī, *n.* *pl.* Theories, -rīz, an exposition of the abstract principles of a science or art considered apart from practice; hypothesis; philosophical explanation of moral or physical phenomena.

theosophic, -ō-sof'īk, *adj.* pert. to theosophy; theosophists. Also Theosophical.

theosophism, -ōs'ō-fīzm, *n.* pretension to divine wisdom or illumination.

theosophist, 'ō-fīst, *n.* a believer in theosophy. Also Theosoph.

theosophy, 'ō-fī, *n.* a system of philosophy which professes to investigate the unexplained laws of nature, the powers of man over nature, and the direct knowledge of God attained by extraordinary illumination.

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therapeutic, -ā-pū'tīk, *adj.* curative; *n. pl.* a branch of medicine which deals with the uses, classification, and application for the cure of diseases.

there, -ēr, *adv.* in that place; at that point or stage.

therefore, -fōr, *adv. & conj.* for that or this reason; for that reason or purpose.

theurgic, -i-an-thrōp'īk, *adj.* noting form of religion in which deities are

represented combined under the form of men and animals.

theriomorphic, -i-ō-mōr'fīk, *adj.* having the form of an animal.

theriotomy, -i-ōt'ō-mī, *n.* the anatomy of the lower animals.

Therma, a *prefix* meaning *heat*. Also Thermo.

Therma, -thēr'mē, *n. pl.* hot springs or baths.

Thermal, 'māl, *adj.* pert. to heat; warm.

thermograph, -mēt'ō-grāf, *n.* a self-registering thermometer.

Thermidor, 'mī-dor, *n.* the 11th month of the French Republican year, beginning the middle of July.

thermometer, -mōm'e-tēr, *n.* an instrument for measuring the degree of heat or temperature of bodies.

thermometric, -mō-mē'trīk, *adj.* pert. to, made or ascertained by, a thermometer. Also Thermometrical.

thermometrically, -āl-lī, *adv.* by means of a thermometer.

thermopile, 'mō-pīl, *n.* an instrument for indicating slight variations of temperature.

thermoscope, 'mō-skōp, *n.* an instrument indicating relative differences in temperature.

thermostat, 'mō-stāt, *n.* an automatic apparatus for regulating temperature.

thermotie, -mō'tīk, *adj.* pert. to, or produced by, heat; *n. pl.* the science of heat.

thermotropism, 'rō-pīzm, *n.* the phenomena exhibited by some plants of turning towards the sun or source of heat.

Therma, -thēr'mz, *n. pl.* the intestines of animals; prepared gut [Scot.]. Also Thairms, Tharms.

theroid, thē'roid, *adj.* having animal propensities or characteristics.

thesaurus, the-sā'rus, *n.* a storehouse or treasury; lexicon or dictionary.

These, *pl.* of This.

thesis, thē'sīs, *n.* *pl.* Theses, -sēz, an essay or dissertation on some particular subject; subject set a student on which to write prior to granting him a degree; the exercise itself; in Logic, an affirmation.

thesmothete, thes'mō-thēt, *n.* a lawgiver or legislator, esp. one of the six junior archons of ancient Athens, who annually revised the laws.

Thespian, 'pī-an, *adj.* pert. to Thespis, the founder of Greek drama; hence dramatic.

Theta, thē'tā, *n.* the Greek θ (θ).

Theurgic, -ēr-jīk, *adj.* pert. to theurgy or supernatural magic.

Thews, thūz, *n. pl.* muscles; strength

Webster's New Illustrated Dictionary

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these, *pl.* of this.

thesis (thē'sīs), *n.* [*pl.* theses ('sēz)], an essay or dissertation on some particular subject; subject set a student on which to write prior to granting him a degree; the exercise itself; in logic, an affirmation.

Thespian ('pī-an), *adj.* pertaining to Thespis, the founder of Greek drama; hence dramatic.

theta (thē'tā), *n.* the Greek θ (θ), **theurgic** (-ēr'jīk), *adj.* pertaining to theurgy or supernatural magic.

thews (thūz), *n. pl.* muscles; strength.

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The British Empire Dictionary

THEY.

741

THORNBACK.

they, *pl.* of He, She, or It.

thick, *thick*, *adj.* not thin; compact; dense; not clear or transparent; misty; muddy; indistinct; dull; very intimate; closely set; crowded; following in quick succession: *adv.* closely; indistinctly; to a great depth; fast: *n.* the thickest part.

thicken, *thickens*, *v.t.* to make thick or thicker; render dense; inspissate; make dark or obscure; become closer or more numerous: *v.i.* to become thick or thicker.

thickening, *en-ing*, *n.* something added to a liquid or mass to make it thicker.

thicket, *et*, *n.* a close wood or cluster of trees.

thicket, *set*, *adj.* closely planted; having a thick body: *n.* a close, thick hedge.

thief, *thief*, *n.* *pl.* Thieves, *thēvs*, one who takes unlawfully what is not his own.

thieve, *thiv*, *v.t.* to steal.

thievish, *ish*, *adj.* addicted to theft; dishonest; obtained by stealing.

thigh, *thi*, *n.* the thick muscular part of the leg between the knee and the trunk.

thill, *thil*, *n.* the shaft of a cart or other vehicle; floor of a coal mine.

thiller, *er*, *n.* the shaft horse.

thimble, *thim'bl*, *n.* a cup-shaped metallic protective cover for the finger in sewing; anything like a thimble; an iron ring belonging to a sail, fitted to receive a rope.

thimble-rig, *-rig*, *n.* a sleight-of-hand trick in which a pea is pretended to be hidden under one of three thimbles: *v.t.*, *pret.* & *p.p.* *-rigged*, *p.pr.* *-rigging*, to cheat by means of the thimble-rig trick.

thin, *thin*, *adj.*, *comp.* thinner, *superl.* thinnest, having little thickness; slim; slender; not dense or thick; not close or crowded; poor; slight; meagre; not full or well grown: *adv.* not thickly: *v.t.* to make thin; attenuate: *v.i.* to grow thin.

thine, *thin*, *pron.* & *adj.* belonging to, relating to, or being the property of, thee.

thing, *thing*, *n.* whatever is distinct, or conceived to be distinct, from one's self or other intelligent beings; inanimate matter; part or portion; an object of pity and contempt: in Norway and Sweden, a judicial or legislative assembly: *pl.* clothes; furniture; luggage, &c.

think, *think*, *v.i.*, *pret.* & *p.p.* thought, *p.pr.* thinking, to have the mind occupied on some subject; form an opinion by reasoning; believe; judge; intend or purpose; imagine; recollect; consider or reflect; presume: *v.t.* to imagine.

thinkable, *'a-bl*, *adj.* conceivable.

Thinking, *ing*, *adj.* having the faculty of thought; capable of a regular train of thought: *n.* meditation; judgment.

thinness, *thin'nes*, *n.* the state or quality of being thin.

Third, *thērd*, *adj.* the next after the second: the ordinal of three; noting one of 3 equal parts: *n.* a third part of anything; an interval of three diatonic sounds and two intervals [Mus.].

Thirlage, *thērl'aj*, *n.* the right possessed by a mill owner to compel his tenants to bring their corn to be ground at his mill.

Thirst, *thērst*, *n.* the sensation of a desire to drink; great desire for drink; drought; eager desire: *v.t.* to be thirsty.

Thirstily, *'i-li*, *adv.* in a thirsty manner.

Thirstiness, *'i-nes*, *n.* the state of being thirsty.

Thirsty, *'i*, *adj.*, *comp.* thirstier, *superl.* thirstiest, feeling thirst.

Thirteen, *thēr'tēn*, *adj.* 10 and 3: *n.* the number of 10 and 3.

Thirteenth, *'tēnth*, *adj.* next in order after the twelfth: the ordinal of thirteen.

Thirtieth, *'ti-eth*, *adj.* next in order after the twenty-ninth.

Thirty, *'ti*, *adj.* three times more than 10: *n.* the sum of three tens.

This, *this*, *pron.* & *adj.*: *pl.* These, *thēs*, that which is present; that which is just now or last mentioned.

Thistle, *this'l*, *n.* a plant with a prickly stem, and leaves of the genus *Carduus*.

Thither, *thith'ēr*, *adv.* to that place or end.

Thole, *thōl*, *n.* a pin set in the gunwale of a boat to serve as a fulcrum for the oar: *v.t.* to endure or bear [Scot.].

Thomism, *tom'izm*, *n.* the scholastic philosophy and theology of St. Thomas Aquinas, the distinguished schoolman of the 13th cent.

Thomist, *'ist*, *n.* a follower of St. Thomas Aquinas and his doctrines or philosophy.

Thong, *thōng*, *n.* a thin leather strap or string for fastening something; striking part of a whip.

Thoracic, *thō-ras'ik*, *adj.* pert. to the thorax.

Thorax, *'raks*, *n.* the chest, containing the heart, lungs &c.; breastplate or cuirass.

Thorium, *'ri-um*, *n.* a rare metallic element. Also Thorinum.

Thorn, *thān*, *n.* a prickly or spine; prickly tree or shrub; anything that troubles or annoys; care.

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The British Empire Dictionary

VENOM.

774

VERNACULAR.

venom ('vəm), *n.* poison introduced into the system by a bite or sting; spite.
venomous ('vənəs), *adj.* full of venom; poisonous; malignant; spiteful.
venous ('vənəs), *adj.* pert. to, contained in, or consisting of, veins.
vent ('vent), *n.* a small opening for the escape of air, &c.; chimney-flue; outlet; rectum; utterance: *v.t.* to give an opening to.
ventilate ('vɛn-tɪ-lət), *v.t.* to open to the free passage of air; expose to free discussion.
ventilation ('vɛn-tɪ-lə'shun), *n.* the act of ventilating; state of being ventilated; free discussion.
ventilator ('vɛn-tɪ-lə-tər), *n.* a contrivance for regulating the free admission of air.
ventose ('vɛn-tɔs), *n.* the 6th month of the French Republican year (part of February and March).
ventral ('vɛn-trəl), *adj.* pert. to the belly.
ventricle ('vɛn-kl), *n.* a small cavity in an animal body.
ventriloquism ('vɛn-trɪ-lɔ-kwɪzəm), *n.* the act, or art of speaking as from another source than the voice.
ventriloquist ('kwɪst), *n.* one who practises ventriloquism.
venture ('tʃɜː), *n.* an undertaking of chance or danger; risk; speculation: *v.t.* to risk; to send on a venture: *v.i.* to dare.
venturesome ('tʃɜː-səm), *adj.* intrepid; rash. Also **Venturous**.
venturesomeness ('nes), *n.* intrepidity; rashness.
veratrine ('vɛr-ə-trɪn), *n.* a powder made of fine gold wire: used for japauning.
venue ('vɛn-ʊ), *n.* the place where an action in law is laid.
veracious ('vɛ-rə'shəs), *adj.* truthful; true.
veracity ('vɛ-rə'sɪ-tɪ), *n.* truthfulness; truth.
veranda ('vɛ-rəndə), *n.* a kind of covered balcony or open portico supported by light pillars. Also **Verandah**.
verb ('vɜːb), *n.* that part of speech which signifies to be, to do, or to suffer.
verbal ('vɜːbəl), *adj.* expressed in words; oral; literal: *n.* a noun derived from a verb.
verbalism ('vɜːbəlɪzəm), *n.* something expressed verbally.
verbally ('vɜːbəlɪ), *adv.* orally; verbally.
verbatim ('vɛr-bə'tɪm), *adv.* word for word.
verberna ('bɛ-rə'nə), *n.* a genus of ornamental fragrant plants.
verbiage ('bɪ-ʒə), *n.* verbosity.
verboose ('bɔs), *adj.* wordy; prolix.
verboosely ('li), *adv.* with verbosity.
verbosity ('bɔs-ɪ-tɪ), *n.* the use of more words than are necessary. Also **Verbooseness**.

Verdancy ('dɛn-sɪ), *n.* greenness; inexperience.
Verdant ('dɛnt), *adj.* green; fresh; inexperienced; gullible.
Verd-an-tique ('vɛr-ən-tɪk), *n.* a green incrustation on ancient copper and brass objects; a beautiful mottled marble.
Verderer ('dɛr-ər), *n.* an official who has charge of the royal forests.
Verdict ('dɪkt), *n.* the finding of a jury on a trial; judgment; decision.
Verdigris ('dɪ-grɪs), *n.* the blue-green substance which forms on copper or brass: used as a pigment.
Verditer ('dɪ-tər), *n.* a blue or green pigment.
Verdure ('dʊr), *n.* freshness of vegetation.
Verge ('vɜːj), *n.* a rod, mace, &c., carried as an emblem of authority; shaft of a column; spindle of a watch-balance; border or limit: *v.t.* to approach or come near.
Verger ('vɜːj), *n.* a sword or mace bearer; an official who has care of the interior of a church.
Verifiable ('vɛrɪ-fɪ-ə-bəl), *adj.* capable of being verified.
Verification ('vɛrɪ-fɪ-kə'shun), *n.* the act of proving to be true; confirmation; state of being verified.
Verify ('vɛrɪ), *v.t.* *pret.* & *p.p.* verified. *p.pr.* verifying. to prove to be true; fulfil.
Verily ('vɛrɪ), *adv.* in truth; certainly.
Verisimilitude ('vɛrɪ-sɪ-mɪ-lɪ-tʊd), *n.* the appearance of truth; probability.
Veritable ('vɛrɪ-tə-bəl), *adj.* true; genuine.
Verity ('vɛrɪ-tɪ), *n.* *pl.* Verities. *lit.* agreement with fact; truth; reality.
V. Juice ('vɛrɪ-ʒʊs), *n.* an acid liquor expressed from unripe grapes, apples, &c.; hence sourness; tartness.
Vermes ('vɛr-mɛs), *n.* a phylum of the Metazoa including worms.
Vermicelli ('vɛr-mɪ-tʃɛ-lɪ), *n.* the stiff paste or dough of fine flour made into tubes.
Vermicular ('vɛr-mɪ-kʊ-lər), *adj.* worm-like. Also **Vermiform**.
Vermifuge ('vɛr-mɪ-fʊj), *n.* a medicine or purgative to expel or destroy worms from or in the body. Also **Vermicide**.
Vermillion ('vɛr-mɪ-lɪ-ən), *n.* a brilliant red pigment: *v.t.* to colour or dye with vermilion.
Vermis ('vɛr-mɪs), *n.* noxious small animals or insects, as rats, fleas, &c.; low, despicable persons.
Vermuth ('vɛr-mʊt), *n.* a liquor of aromatic, aromatic herbs, &c., for creating an appetite.
Vernacular ('vɛr-nə-kʊ-lər), *adj.* pert. to, or characteristic of, one's native country or language: *n.* native idiom.

Webster's New Illustrated Dictionary

venom ('vəm), *n.* poison introduced into the system by a bite or sting; spite.
venomous ('vənəs), *adj.* full of venom; poisonous; malignant; spiteful.
venous ('vənəs), *adj.* pertaining to, contained in, or consisting of, veins.
vent ('vent), *n.* a small opening for the escape of air, &c.; chimney-flue; outlet; rectum; utterance: *v.t.* to give an opening to.
ventilate ('vɛn-tɪ-lət), *v.t.* to open to the free passage of air; expose to free discussion.
ventilation ('vɛn-tɪ-lə'shun), *n.* the act of ventilating; state of being ventilated; free discussion.
ventilator ('vɛn-tɪ-lə-tər), *n.* a contrivance for regulating the free admission of air.
ventral ('vɛn-trəl), *adj.* pertaining to the belly.
ventricle ('vɛn-kl), *n.* a small cavity in an animal body.
ventriloquism ('vɛn-trɪ-lɔ-kwɪzəm), *n.* the act or art of speaking as from another source than the voice.
ventriloquist ('kwɪst), *n.* one who practises ventriloquism.
venture ('tʃɜː), *n.* an undertaking of chance or danger; risk; speculation: *v.t.* to risk; to send on a venture: *v.i.* to dare.
venturesome ('tʃɜː-səm), *adj.* intrepid; rash. Also **venturous**.
venturesomeness ('nes), *n.* intrepidity; rashness.
veratrine ('vɛr-ə-trɪn), *n.* a powder made of fine gold wire: used for japauning.
venue ('vɛn-ʊ), *n.* the place where an action in law is laid.
veracious ('vɛ-rə'shəs), *adj.* truthful; true.
veracity ('vɛ-rə'sɪ-tɪ), *n.* truthfulness; truth.
veranda ('vɛ-rəndə), *n.* a kind of covered balcony or open portico supported by light pillars. Also **Verandah**.
verb ('vɜːb), *n.* that part of speech which signifies to be, to do, or to suffer.
verbal ('vɜːbəl), *adj.* expressed in words; oral; literal: *n.* a noun derived from a verb.
verbalism ('vɜːbəlɪzəm), *n.* something expressed verbally.
verbally ('vɜːbəlɪ), *adv.* orally; verbally.
verbatim ('vɛr-bə'tɪm), *adv.* word for word.
verberna ('bɛ-rə'nə), *n.* a genus of ornamental fragrant plants.
verbiage ('bɪ-ʒə), *n.* verbosity.
verboose ('bɔs), *adj.* wordy; prolix.
verboosely ('li), *adv.* with verbosity.
verbosity ('bɔs-ɪ-tɪ), *n.* the use of more words than are necessary. Also **Verbooseness**.

verdancy ('dɛn-sɪ), *n.* greenness; inexperience.
verdant ('dɛnt), *adj.* green; fresh; inexperienced; gullible.
Verd-an-tique ('vɛr-ən-tɪk), *n.* a green incrustation on ancient copper and brass objects; a beautiful mottled marble.
Verderer ('dɛr-ər), *n.* an official who has charge of the royal forests.
Verdict ('dɪkt), *n.* the finding of a jury on a trial; judgment; decision.
Verdigris ('dɪ-grɪs), *n.* the blue-green substance which forms on copper or brass: used as a pigment.
Verditer ('dɪ-tər), *n.* a blue or green pigment.
Verdure ('dʊr), *n.* freshness of vegetation.
Verge ('vɜːj), *n.* a rod, mace, &c., carried as an emblem of authority; shaft of a column; spindle of a watch-balance; border or limit: *v.t.* to approach or come near.
Verger ('vɜːj), *n.* a sword or mace bearer; an official who has care of the interior of a church.
Verifiable ('vɛrɪ-fɪ-ə-bəl), *adj.* capable of being verified.
Verification ('vɛrɪ-fɪ-kə'shun), *n.* the act of proving to be true; confirmation; state of being verified.
Verify ('vɛrɪ), *v.t.* *pret.* & *p.p.* verified. *p.pr.* verifying. to prove to be true; fulfil.
Verily ('vɛrɪ), *adv.* in truth; certainly.
Verisimilitude ('vɛrɪ-sɪ-mɪ-lɪ-tʊd), *n.* the appearance of truth; probability.
Veritable ('vɛrɪ-tə-bəl), *adj.* true; genuine.
Verity ('vɛrɪ-tɪ), *n.* *pl.* Verities. *lit.* agreement with fact; truth; reality.
V. Juice ('vɛrɪ-ʒʊs), *n.* an acid liquor expressed from unripe grapes, apples, &c.; hence sourness; tartness.
Vermes ('vɛr-mɛs), *n.* a phylum of the Metazoa including worms.
Vermicelli ('vɛr-mɪ-tʃɛ-lɪ), *n.* the stiff paste or dough of fine flour made into tubes.
Vermicular ('vɛr-mɪ-kʊ-lər), *adj.* worm-like. Also **Vermiform**.
Vermifuge ('vɛr-mɪ-fʊj), *n.* a medicine or purgative to expel or destroy worms from or in the body. Also **Vermicide**.
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Vernacular ('vɛr-nə-kʊ-lər), *adj.* pert. to, or characteristic of, one's native country or language: *n.* native idiom.

Identical matter has been printed in red to show how much has been appropriated from the British Empire Dictionary

District Court of the United States,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY, a corporation,

Complainant,

vs.

SYNDICATE PUBLISHING COMPANY,
a corporation,

Defendant.

ANSWER OF DEFENDANT TO BILL AS AMENDED.

The answer of Syndicate Publishing Company to the bill of complaint of G. & C. Merriam Company, Complainant.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many uncertainties and other imperfections in said complainant's bill of complaint contained, for answer thereto or unto so much and such parts thereof as it is advised is or are material or necessary for it to make answer unto, answers as follows:

The defendant admits that Noah Webster was the author of numerous books upon various subjects, including several dictionaries of the English language published at different dates, and that he caused to appear upon such dictionaries as he published as a part of the title thereof his

3805

Answer.

3806

3807

own surname "Webster," but it denies that said word "Webster" was used on any dictionaries of which said Noah Webster was the author in any other sense than to indicate that he was the author and compiler of the contents of said dictionaries, and the proprietor and owner of copyrights duly obtained by him under the then existing Acts of Congress of the United States by which the literary property therein was protected, some of which copyrights expired prior to the decease of said Webster and all of which expired long before the alleged commission by this defendant of the acts in said bill of complaint complained of, by which expiration of copyrights the literary property in all of said dictionaries became free and ever afterwards open to unrestricted use by the public along with the right to use the name "Webster" thereon on the reprints, revisions and new editions thereof, as well as on a similar dictionary or dictionaries containing in whole or in any part the literary matter or contents of the dictionaries of which said Noah Webster was the author or compiler, and this defendant denies that the right to use the name "Webster" became at any time or is now a property right valuable or otherwise.

3808

Said defendant admits the decease of Noah Webster in or about the year 1843, but is informed only by said bill of complaint that at the time of his death he had in course of preparation a new and revised edition of the previous edition of dictionaries which had been prepared and published by him and therefore neither admits nor denies said allegations as contained in said bill of complaint.

Defendant admits that complainant is a corporation organized under the laws of the Com-

Answer.

3809

monwealth of Massachusetts with its usual place of business in Springfield, Massachusetts, and admits that the immediate predecessor of said corporation was the firm of G. & C. Merriam & Company and that the immediate predecessor of said last named firm was the firm of G. & C. Merriam.

Defendant also admits that it is a corporation organized and existing under the laws of the State of New York with its usual place of business in the Borough of Manhattan in the City of New York and said State of New York. 3810

Defendant does not know and therefore neither admits nor denies that G. & C. Merriam, predecessors of complainant, acquired by purchase and assignment from the executors, heirs-at-law, and next of kin, and the widow and children of said Noah Webster, deceased, all the right, title and interest which they had in the dictionaries which he had prepared or published, but defendant on information and belief denies that said G. & C. Merriam acquired by purchase and assignment or in any manner from said parties what is called in said bill of complaint, "the good will and trade name thereof." 3811

Defendant does not know and is not informed except by said bill of complaint that said firm of G. & C. Merriam completed an edition of Webster's dictionaries alleged to have been left unfinished by Noah Webster at his death, or that they employed for such purpose William G. Webster, Chauncey A. Goodrich and numerous editors and literary men and it leaves complainant to make such proof thereof as it shall be advised is material. 3812

Defendant admits that at intervals during the period from 1847 to the date of the filing of this

3813

Answer.

3814

bill of complaint, the complainant or some one of its predecessors has published various dictionaries of the English language either unabridged or condensed or in various styles and forms and that as a part of the name or title of each of said dictionaries, either in the copyright title, or otherwise, the complainant or one of its predecessors, has used the name "Webster," but defendant does not know and therefore neither admits nor denies the publication of the specified dictionaries referred to by the complainant in its bill of complaint nor does it admit or deny the respective title, copyright or otherwise of each of said dictionaries so described and referred to and it leaves complainant to make such proof regarding said dictionaries as it shall find itself able to and as it shall be advised is material.

3815

Defendant denies that the various titles of different dictionaries alleged to have been used by complainant or one of its predecessors in various dictionaries published by it or them were in fact adopted by complainant or either one of its predecessors as its or their own special trade name for each of said dictionaries respectively.

3816

Defendant admits that the great renown of Noah Webster as the originator and author of dictionaries published during his lifetime and bearing his name, in their title, and the great learning and care bestowed by him on the preparation of the same had great influence on editions of said dictionaries published after his decease, but on information and belief defendant denies that by reason thereof and by reason of the learning, skill and care of the editors and assistants in preparing and editing and placing upon the market later editions of dictionaries bearing his

Answer.

3817

name in their title, and by reason of the skill and care exercised by complainant or either one of its predecessors in preparing, printing, proof reading, binding, publishing and advertising said later dictionaries it became well known and understood in the trade and by all book sellers, dealers, in and users of dictionaries and by the public in general that all dictionaries bearing the title "Webster's Dictionary" either alone or in combination with other words were in fact and in all cases dictionaries prepared, printed and published by the complainant or any one of its predecessors and by none other.

3818

The defendant also denies that the said title, "Webster's Dictionary" either with or without such other words became a guarantee of the accuracy of any dictionary bearing such title, or a guarantee that the same had been prepared by complainant or either one of its predecessors and their respective editors and assistants and none other, or a guarantee of the correctness of any one of said books as a dictionary of the English language and likewise denies that any one of said dictionaries so published after Noah Webster's death was known by all people desiring to purchase and use a dictionary as a book published by complainant or any one of its predecessors and by none other.

3819

Defendant is not informed and therefore neither admits nor denies that complainant or some of its predecessors acquired by purchase and assignment prior to 1864 from various publishers all their rights, title and interest in dictionaries theretofore published and sold under names of which the word Webster formed a part and it leaves complainant to its proof of said facts

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Answer.

if deemed material, and defendant denies that from any of said parties there was purchased by complainant or any one of its predecessors the "good will and trade name" of any one of said dictionaries.

3822

Defendant denies that upon the publication by complainant or any one of its predecessors of successive editions of its or their dictionaries the prior edition of said dictionary was substantially withdrawn from the market and that thereafter the latest edition of said dictionary alone was known among the trade and by purchasers and users as "Webster's Dictionary" and denies that all previous editions of said dictionaries were supplanted and made obsolete by said successive new editions and denies that thereafter no copies of said earlier editions were printed or sold by complainant or its predecessors and denies that with the exception of the filling of special orders for particular editions no copies of earlier editions could be purchased except as second hand books.

3823

3824

But defendant says the complainant's predecessors and complainant itself have continued to publish and sell in large quantities to the trade and the public copies of some at least of its prior editions of dictionaries after the publication of its "successive" editions and complainant has continued such publication and sales to the present time and was so publishing and selling the same at the date of the filing of its bill herein, and that such copies of prior editions have borne and still bear upon their covers the registered trade marks of the complainant and upon the backs of their title pages notices of successive copyrights of such dictionaries entered either by the complainant or its predecessors.

Vol. I, pp. 1-913.

Vol. II, pp. 914-1552.

Vol. III, pp. 1553-2093.

INDEX.

Pleadings.

	Page.	Vol.
Bill of Complaint against Syndicate Pub. Co.....	1	I.
Amendment to Bill	55	I.
Trade-Mark Exhibits	59	I.
Answer of Syndicate Pub. Co.....	951	II.
Replication	99	I.
Pleadings in Cupples & Leon case (omitted by stipulation).....	2090	III.
Order Re-opening Case for Sur-rebuttal.....	1911	III.

Complainant's Testimony.

Adams, John Quincy		
Direct	491	I.
Cross	496	I.
Bond, Charles D.		
Direct	106	I.
Cross	108	I.
Re-direct	111	I.
Re-cross	111	I.
Baker, Harris W.		
Direct	122	I.
Cross	128	I.
Boynton, Walter I.		
Direct	180	I.
Cross	184	I.
Buddecke, Walter M.		
Direct	258	I.
Cross	262	I.
Re-direct	268	I.
Re-cross	268	I.
Re-re-direct	268	I.
Re-re-cross	266	I.
Burlingham, E. Louise		
Direct	312	I.
Cross	315	I.
Re-direct	318	I.
Re-cross	316	I.

	Page.	Vol.
Britton, Sumner C.		
Re-direct	591	I.
Cross	596	I.
Cowles, Clinton W.		
Direct	101	I.
Cross	104	I.
Cooper, Joseph C.		
Direct	111	I.
Cross	115	I.
Re-direct	118	I.
Clark, George J.		
Direct	187	I.
Cross	190	I.
Re-direct	193	I.
Re-cross	193	I.
Re-re-direct	194	I.
Re-re-cross	194	I.
Crossman, Charles P.		
Direct	202	I.
Catharine, John Paul		
Direct	347	I.
Cross	349	I.
Re-direct	350	I.
Condit, H. M.		
Direct	387	I.
Clarke, William B.		
Direct	485	I.
Cross	488	I.
Re-direct	490	I.
Conroy, Michael J.		
Direct	634	I.
Draper, Andrew S.		
Direct	500	I.
Foley, Thomas F.		
Direct	278	I.
Cross	281	I.
Re-direct	283	I.
Re-cross	286	I.
Funk, Isaac K.		
Direct	362	I.
Cross	365	I.
Re-direct	367	I.
Fisher, Edith		
Direct	434	I.
Cross	436	I.
Gifford, John L.		
Direct	239	I.
Cross	243	I.
Re-direct	248	I.

INDEX.

	Page.	Vol.
Gash, Edward		
Direct	270	I.
Cross	272	I.
Re-direct	275	I.
Re-cross	276	I.
Geldart, Richard W.		
Direct	351	I.
Cross	352	I.
Re-direct	353	I.
Hughes, Henry E.		
Direct	320	I.
Cross	324	I.
Re-direct	328	I.
Haymaker, Homer A.		
Direct	368	I.
Cross	381	I.
Re-direct	386	I.
Hagarty, Laura Dunbar		
Direct	440	I.
Kronvall, Edward		
Direct	210	I.
Lutz, Arthur		
Direct	296	I.
Cross	299	I.
Re-direct	301	I.
Re-cross	301	I.
Monroe, Robert C.		
Direct	120	I.
Cross	122	I.
McCarthy, John D.		
Direct	288	I.
Cross	292	I.
Re-direct	293	I.
McMahon, Edward J.		
Direct	302	I.
Cross	305	I.
Re-direct	308	I.
Re-cross	310	I.
Re-re-direct	311	I.
Martin, George H.		
Direct	457	I.
Cross	459	I.
Re-direct	464	I.
Mead, Edwin D.		
Direct	472	I.
Cross	475	I.
Re-direct	480	I.
Re-cross	483	I.

INDEX.

	Page.	Vol.
Mawson, C. O. Sylvester,		
Direct	503	I.
Cross	554	I.
Murphy, J. F.		
Direct	617	I.
Cross	622	I.
Newberry, William W.		
Direct	402	I.
Cross	403	I.
Neuchterlein, Bernard		
Direct	444	I.
O'Neill, John J.		
Direct	465	I.
Cross	466	I.
Pickett, Harry Q.		
Direct	329	I.
Cross	331	I.
Pulcifer, Irving S.		
Direct	207	I.
Putnum, Irving		
Direct	390	I.
Cross	398	I.
Porter, Levi E.		
Direct	420	I.
Cross	430	I.
Re-direct	433	I.
Recalled:		
Direct	443	I.
Recalled:		
Direct	452	I.
Rogers, Charles		
Direct	195	I.
Robinson, Louis B.		
Direct	407	I.
Seybel, Frederick W.		
Direct	249	I.
Cross	252	I.
Re-direct	256	I.
Re-cross	257	I.
Smack, Ida B.		
Direct	354	I.
Cross	356	I.
Re-direct	361	I.
Timms, Charles J.		
Direct	340	I.
Cross	343	I.
Van Dyck, Henry H.		
Direct	332	I.
Cross	338	I.
Re-direct	339	I.

INDEX.

	Page.	Vol.
Washburn, Kirk N.		
Direct	132	I.
Cross	164	I.
Re-direct	176	I.
Re-cross	178	I.
Re-re-direct	179	I.
Recalled :		
Direct	214	I.
Cross	233	I.
Re-direct	236	I.
Recalled :		
Direct	635	I.
Cross	653	I.
Re-direct	656	I.
Re-cross	657	I.
Washburn, Kirk N., Jr.		
Direct	198	I.
Wells, Halla		
Direct	416	I.
Cross	417	I.
Re-direct	419	I.
Wadlin Horace G.		
Direct	467	I.
Cross	470	I.

Complainant's Exhibits.

	Page Offered.	Page Printed.	Vol.
<i>Advertisements:</i>			
Defendant's Advertisements	174		I.
Defendant's Advertisement of May 4, 1912...	1164		II.
Additional Advertisements of defendant's book	414		I.
Washburn's Exhibit 1, pages from "The Tidings"	236		I.
Washburn's Exhibit 2, pages from "Sycamore Sentinel"	236		I.
Washburn's Exhibit 3, pages from "The Elliot Messenger"	236		I.
Washburn's Exhibit 4, pages from "The Pastor's Call"	236		I.
Washburn's Exhibit 5, pages from "The Church Invitation"	236		I.
Washburn's Exhibit 6, pages from "Our Master"	236		I.
Washburn's Exhibit 7, pages from "St. John's Message"	236		I.
McCarthy's Advertisements	290		I.
McCarthy's Carton	290		I.
Lutz's Carton	302		I.

INDEX.

	Page Offered.	Page Printed.	Vol.
Burlingham's Carton	318		1.
Timm's Carton	341		1.
Halla Well's Carton	419		1.
Joseph Horne Co.'s Advertisement.....	621		1.
Reading Notices of Defendant's Dictionary in Pittsburg Post	621		1.
Advertisement of Defendant's Dictionary in Pittsburg Post of Feb. 12, 1911.....	622		1.
"Uncle Sam" Advertisement in Pittsburg Post	622		1.
"Uncle Sam" Advertisement clipped from Boston American of September 12, 1910....	649		1.
Specimen of Advertisements copied by de- fendant	649		1.
Dictionary Coupon used by Boston Ameri- can	649	649	1.
Dictionary Coupon used by Defendant.....	649	649	1.
Cut of defendant's dictionary sent to com- plainant	121		1.
Cut No. 1 returned to complainant.....	121		1.
Cut No. 2 returned to complainant.....	121		1.
Price-List of complainant's publications.....	659	659	1.

Copyright Certificates.

Copyright certificates relating to Crown Dic- tionary	173	162	1.
Copyright Certificates of Webster Series....	215	721	1.

Dictionaries:

Complainant's Dictionaries:—

	Page Offered.	Vol.
Webster's Collegiate Dictionary	162	1.
Webster's Academic Dictionary	162	1.
Webster's High School Dictionary.....	162	1.
Webster's Primary Dictionary	162	1.
Webster's Common School Dictionary	162	1.
Webster's Condensed Dictionary	175	1.
Webster's Dictionary (1847 edition).....	370	1.
Webster's Dictionary (1864 edition)	370	1.
Webster's International Dictionary (1890 edition)....	370	1.
Webster's New International Dictionary (1909 edition)	370	1.

Defendant's Dictionaries:—

Webster's New Standard Dictionary.....	206	1.
Webster's New Century Dictionary.....	206	1.
Exhibit B. referred to by H. W. Baker (Webster's New Standard Dictionary)	206	1.
Exhibit C. referred to by H. W. Baker (Webster's New Century Dictionary)	206	1.
Defendant's Book compared with British Empire Dictionary	328	1.

INDEX

	Page Count	Vol.
<i>Defendant's Dictionaries purchased by witnesses:</i>		
Burlingham's dictionary	218	1
Catharine's dictionary	248	1
Cowles dictionary	312	1
Fisher's dictionary	410	1
Foley's dictionary	410	1
Gash's dictionary	410	1
Geldart's dictionary	410	1
Hughes' dictionary	218	1
Late's dictionary	218	1
McCarthy's dictionary	218	1
McMahon's dictionary	218	1
Pickett's dictionary	218	1
Pickett's dictionary (flexible cover)	218	1
Pulcher's dictionary	218	1
Seydel's dictionary	218	1
Timm's dictionary	218	1
Well's dictionary	218	1
<i>Miscellaneous American Dictionaries:</i>		
Bald's Complete Compendium	410	1
Century Dictionary	218	1
Craig's Dictionary	410	1
Crown Dictionary (Each A. referred to by M. W. Baker)	218	1
Dunbar's Standard New Century Dictionary	410	1
Excelsior Dictionary	410	1
Hassell's Practical Illustrated Pronouncing Pocket Dictionary	410	1
Harper's American Standard Dictionary	410	1
Harper's American Unabridged Dictionary	410	1
Harper's American Popular Dictionary	410	1
Harper's Handy Reliable Dictionary	410	1
Harper's American Diamond Pronouncing Dictionary	410	1
Popular American Dictionary	410	1
Standard Dictionary (Funk & Wagnell's)	218	1
Student's Standard Dictionary (Funk & Wagnell's)	218	1
Webster's Dictionary	218	1
<i>Miscellaneous British Dictionaries</i>		
Amsterdam's Concise Dictionary	218	1
British Empire Dictionary	218	1
Canell's Dictionary	218	1
Chamber's Twentieth Century Dictionary	218	1
Concise Oxford Dictionary	218	1
Johnson's Dictionary (1791 edition)	218	1
Natall's Dictionary	218	1
Ogilvie's Imperial Dictionary (1883 edition)	218	1
Sturgeson's Dictionary	218	1
Student's Imperial Dictionary	218	1

	Page Offered.	Page Printed.	Vol.
<i>Documents and Tables Relating to Contents and Origin of Defendant's Dictionary</i>			
Red Letter Exhibit Showing identity of defendant's dictionary with British Empire Dictionary	514	889	I.
Analysis of Price's British Empire Dictionary and defendant's Webster's New Century Dic- tionary	517	517	I.
Summary of Comparison of defendant's dic- tionary with British Empire Dictionary....	519	519	I.
British Spellings in defendant's dictionary....	525	525	I.
Cross-references in defendant's dictionary....	529	529	I.
Mixed definitions in defendant's dictionary..	533	533	I.
British definitions in defendant's dictionary..	535	535	I.
Words referred to in definitions, but not in vocabulary of defendant's dictionary.....	540	540	I.
Parallel Column Exhibit in Answer to Peck's Exhibit	551		I.
<i>Documents relating to use and Meaning of Name Webster as Applied to Dictionaries</i>			
Title Pages, Cover Inscriptions, and Copyright Notices of Webster Series.....	214	671	I.
Webster in the Courts	174	853	I.
<i>Early Contracts and Assignments</i>			
Webster Contract of 1853.....	215	783	I.
Lippincott Contract of 1858.....	215	795	I.
Contract and Assignment of University and Pocket Dictionaries	215	797	I.
Contract and Assignment of Webster's High School Dictionary	215	801	I.
Contract and Assignment of Webster's Acade- mic Dictionary	215	805	I.
Delegation of Power to Executors by Heirs..	215	809	I.
Contract between Heirs and G. & C. Mer- riam as to Abridged Dictionaries.....	215	810	I.
<i>Trade-Marks Exhibits</i>			
Registered Trade-Mark No. 1 filed with Bill..		59	I.
Registered Trade-Mark No. 2 filed with Bill..		61	I.
Registered Trade-Mark No. 3 filed with Bill..		63	I.
Registered Trade-Mark No. 4 filed with Bill..		65	I.
Registered Trade-Mark No. 5 filed with Bill..		67	I.
Registered Trade-Mark No. 6 filed with Bill..		69	I.
Registered Trade-Mark No. 7 filed with Bill..		71	I.
Registered Trade-Mark No. 8 filed with Bill..		73	I.
Registered Trade-Mark No. 9 filed with Bill..		75	I.
Registered Trade-Mark No. 10 filed with Bill..		77	I.
Certified copies of Registered Trade-Marks..	414	813	I.

Defendant's Testimony.

	Page.	Vol.
Carroll, Lauren		
Direct	1904	III.
Cross	1908	III.
Recalled:		
Direct	2040	III.
Cross	2042	III.
Doran, George Henry		
Direct	1193	II.
Cross	1197	II.
Donohue, Wm. F.		
Direct	1047	II.
Cross	1052	II.
Re-direct	1059	II.
Re-cross	1060	II.
Eckle, August E.		
Direct	1395	II.
Cross	1409	II.
Re-direct	1417	II.
Gray, William M.		
Direct	1432	II.
Cross	1438	II.
Re-direct	1454	II.
Re-cross	1532	II.
Hesslein, Max		
Direct	1001	II.
Cross	1009	II.
Re-direct	1014	II.
Re-cross	1015	II.
Leon, Arthur T.		
Direct	1240	II.
Cross	1254	II.
Re-direct	1289	II.
Re-cross	1293	II.
Little, Joseph J.		
Direct	1688	III.
Cross	1691	III.
Re-direct	1699	III.
Re-cross	1701	III.
McKnight, Robert		
Direct	1420	II.
Cross	1424	II.
Re-direct	1429	II.
Re-cross	1430	II.
Nolan, John W.		
Direct	1838	III.
Cross	1857	III.
Re-direct	1900	III.
Re-cross	1902	III.

INDEX.

	Page.	Vol.
Ogilvie, George W.		
Direct	1771	III.
Cross	1795	III.
Peck, Harry Thurston		
Direct	1534	II.
Cross	1562	III.
Re-direct	1677	III.
Re-cross	1684	III.
Recalled :		
Direct	1914	III.
Cross	1960	III.
Re-direct	1986	III.
Re-cross	1987	III.
Pfanstiehl, H. Josephine		
Direct	1017	II.
Cross	1020	II.
Re-direct	1021	II.
Re-cross	1022	II.
Re-re-direct	1023	II.
Rankin, Luther M.		
Direct	1024	II.
Rolfe, John Carew		
Direct	1988	III.
Cross	1994	III.
Re-direct	2017	III.
Re-cross	2020	III.
Sherwood, Robert E.		
Direct	1207	II.
Cross	1219	II.
Re-direct	1227	II.
Re-cross	1228	II.
Shultz, Herman		
Direct	1297	II.
Cross	1389	II.
Re-direct	1394	II.
Skeoch, Thomas I.		
Direct	1229	II.
Cross	1236	II.
Re-direct	1239	II.
Swift, Albert L.		
Direct	1140	II.
Cross	1149	II.
Re-direct	1182	II.
Re-cross	1186	II.
Re-re-direct	1190	II.
Re-re-cross	1192	II.
Recalled :		
Direct	1704	III.
Cross	1751	III.
Re-direct	1768	III.
Re-cross	1769	III.

INDEX.

	Page.	Vol.
Watrous, Francis M.		
Direct	2021	III.
Cross	2027	III.
Wright, Frank E.		
Direct	1061	II.
Cross	1083	II.
Re-direct	1113	II.
Re-cross	117	II.
Re-re-direct	1132	II.
Re-re-cross	1137	II.

Defendant's Exhibits.

Page
Offered. Page
Printed. Vol.

Advertisements and Newspaper Clippings

"Makers & Producers of Premium Specialties"	1190	II.
Catalogue of Cupples & Leon with Notice...	1248	II.
Miscellaneous Newspaper Advertisements....	1706	III.
Miscellaneous Newspaper Advertisements....	1714	III.
Advertisements in connection with "Webster's Condensed Dictionary" cut from St. Louis Republic	1719-1733	III.
Miscellaneous Newspaper Advertisements. 1743-1747		III.
Advertisement from St. Louis Post-Dispatch	1771	III.
Advertisements of the Springfield Union....	1854	III.
Clipping from the Springfield Republican....	1855	III.
Advertisement from "Outing," (offered at final hearing)		

Copyright Certificates

Four certificates of copyright issued to Frank E. Wright	1739	1740	III.
--	------	------	------

Dictionaries.

No. 1. "Webster's Unabridged," published for the trade	1004	II.
No. 2. Webster's National Pictorial Dictionary	1018	II.
Webster's New Illustrated Dictionary.....	1080	II.
Webster's Condensed Dictionary, Twentieth Century Edition	1082	II.
Specimen Book, Webster's New Century Dictionary	1247	II.
Specimen Book, Webster's New Century Dictionary	1248	II.
Webster's Encyclopedic Dictionary	1828	III.
Webster's Universal Dictionary	1828	III.
Webster's Reliable Dictionary	1828	III.
Webster's Adequate Dictionary	1828	III.
Hill's Vest Pocket Webster's Dictionary....	1828	III.

INDEX.

	Page Offered.	Page Printed.	Vol.
Wehman Brothers Latest Vest Pocket Webster's Dictionary	1828		III.
Peerless Webster Self-Pronouncing Dictionary	1828		III.
Excelsior Webster Pocket Speller and Definer.	1829		III.
Webster's Pocket Dictionary and Speller.....	1829		III.
Webster's pronouncing Dictionary of the English Language	1829		III.
Hurst's Webster's Dictionary	1829		III.
A Concise Webster's Dictionary	1829		III.
Webster's Library Dictionary for Home, School and Office	1829		III.
Webster's American Standard Dictionary....	1829		III.
Webster's School and Office Dictionary.....	1830		III.
Webster's Universal Self-Pronouncing Dictionary	1830		III.
Webster's Business and College Dictionary....	1830		III.
Webster's Modern Dictionary of the English Language for Home, School and Office....	1831		III.
Laird & Lee's Webster's Modern Dictionary..	1831		III.
Laird & Lee's Webster's New Standard Dictionary of the English Language, Elementary School Edition	1831		III.
Laird & Lee's Webster's New Standard Dictionary, Intermediate School Edition.....	1831		III.
Laird & Lee's Webster's New Standard Dictionary of the English Language, Common School Edition	1831		III.
Laird & Lee's Webster's New Standard Dictionary, Illustrated Library Edition.....	1832		III.
Laird & Lee's New Standard American Dictionary, Encyclopedic Edition.....	1832		III.
Webster's Condensed Dictionary	1833		III.
An American Dictionary of the English Language, Noah Webster, published 1846 by Harper Bros.	1833		III.
John Ogilvie's "Imperial Dictionary," First Edition	1954		III.
Webster's New Illustrated, marked by Peck..	1959		III.
Webster's 1847, marked by Peck.....	1959		III.
Webster's Twentieth Century Dictionary published by the Madison Book Company, Chicago, 1902	663		I.
<i>Documents and Tables Relating to Contents and Origin of Defendant's Dictionary</i>			
"Exhibit A," Prefatory Portions of Defendant's Dictionary	1560		III.
"Exhibit B," Introductory Portions of Webster's 1847	1559		III.
"Exhibit C," Peck's Identities	1556		III.
Tables Explanatory of Peck's percentages....	1960		III.

INDEX.

	Page Offered.	Page Printed.	xiii Vol.
<i>Documents Relating to Use and Meaning of Name Webster as Applied to Dictionaries</i>			
Cards of Witness Schultz	1308	1308	II.
Cards of Witness Gray.....	1455	1456	II.
Catalogue Cards from Library of Congress...	1780	1780	III.
Schedule produced by Witness Rankin.....	1026	1027	II.
Photographs of Covers and Title Pages of Dictionaries (Offered at Final Hearing)...			

Miscellaneous Documents:

Exhibits "A" and "B" Circular and Letter....	1132		II.
Telegram from Pittsburg Post to Swift.....	1726	1726	III.
Letter from Edward T. Roe.....	1906	1907	III.
Eleven Letters commending the Syndicate Dictionary	1706	1707	III.

Stipulations.

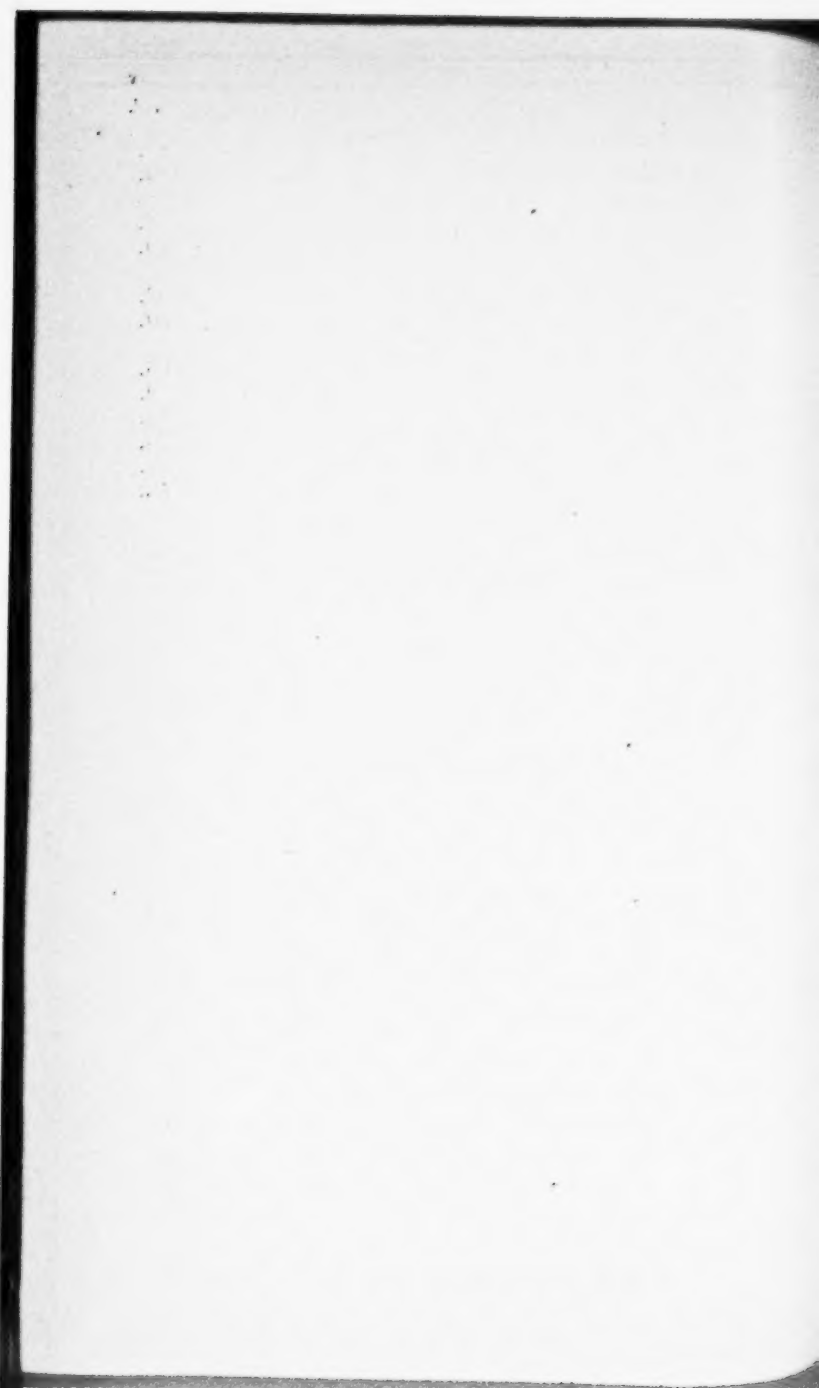
Substance of Stipulations.

	Page.	Vol.
Taking depositions by stenographer.....	101	I.
Waiving signature of witnesses	101	I.
Inserting affidavit of Harris W. Baker.....	122	I.
Inserting affidavit of Kirk N. Washburn.....	132	I.
Exhibits referred to in Washburn affidavit.....	173	I.
Taking depositions by stenographer.....	214	I.
Waiving signatures of witnesses	214	I.
Exhibits offered in evidence to remain in possession of party offering them	257	I.
Objections to testimony	295	I.
Dictionary of Ida B. Smack.....	356	I.
Reserving objections to testimony	373	I.
Inserting affidavit of H. M. Condit.....	387	I.
Taking depositions by stenographer	416	I.
Waiving signature of witnesses	416	I.
Waiving signature of witness Wadlin	467	I.
Inserting affidavit of Andrew S. Draper.....	499	I.
Taking testimony by stenographer.....	503	I.
Reserving objections	516	I.
Taking depositions in Chicago	521	I.
Dictionaries referred to considered in evidence.....	570	I.
Taking Chicago Depositions	591	I.
Reserving objections	611	I.
Production of Dictionary Exhibits	663	I.
Waiving oath and signature of certain witnesses.....	1046	II.
Taking depositions by stenographer	1061	II.
Waiving oath and signature of certain witnesses.....	1060	II.
Waiving oath and signature of certain witnesses.....	1061	II.
Spreading on record correspondence between parties....	1065	II.

	Page.	Vol.
Spreading on record correspondence between parties.....	1070	II.
Admitting exhibits offered with Wright affidavit.....	1080	II.
Admitting exhibits offered with Wright affidavit.....	1082	II.
Waiving oath and signature of certain witnesses.....	1140	II.
Taking depositions by stenographer	1140	II.
Waiving oath and signature of certain witnesses.....	1206	II.
Waiving oath and signature of certain witnesses.....	1228	II.
Consent that one objection apply to whole line of testimony	1234	II.
Waiving signature of certain witnesses.....	1239..	II.
Spreading on record correspondence between parties....	1243	II.
Waiving signature of certain witnesses	1297	II.
Consent that one objection apply to whole line of testimony	1304	II.
Waiving signature of certain witnesses.....	1395	II.
Consent that one objection apply to whole line of testimony	1403	II.
Setting forth letter to Eckle	1405	II.
Waiving signature of certain witnesses	1420	II.
Waiving signature of certain witnesses	1431	II.
Consent that one objection apply to whole line of testimony	1433	II.
Waiving signature of certain witnesses	1534	II.
Waiving signature of certain witnesses.....	1687	III.
Waiving signature of certain witnesses	1703	III.
Admitting newspaper advertisements in evidence.....	1732	III.
Waiving signature of certain witnesses	1771	III.
Waiving signature of certain witnesses.....	1827	III.
Admitting Saalfeld Books in Evidence.....	1827	III.
Admitting in evidence twenty-two Dictionaries of various publishers	1828	III.
Taking depositions by stenographer.....	1839	III.
Waiving signature of certain witnesses.....	1904	III.
Taking depositions by stenographer	1914	III.
Waiving signature of certain witnesses.....	1914	III.
Admitting complainant's affidavits of Mawson and Haskins	2046	III.
<hr/>		
Opinion on Final Hearing.....	2057	III.
Decrees:		
Merriam v Cupples & Leon Co.....	2071	III.
Merriam v Syndicate Pub. Co.....	2072	III.
Petitions for Appeal:		
Merriam v Cupples & Leon Co.....	2073	III.
Merriam v Syndicate Pub. Co.	2078	III.
Orders Allowing Appeal:		
Merriam v Cupples & Leon Co.....	2077	III.
Merriam v Syndicate Pub. Co.....	2083	III.

INDEX.

	Page.	^{xv} Vol.
Assignments of Error:		
Merriam <i>v</i> Cupples & Leon Co.....	2074	III.
Merriam <i>v</i> . Syndicate Pub. Co.....	2080	III.
Appeal Bonds:		
Merriam <i>v</i> Cupples & Leon Co.....	2084	III.
Merriam <i>v</i> Syndicate Pub. Co.....	2084	III.
Citations:		
Merriam <i>v</i> . Cupples & Leon Co.....	2085	III.
Merriam <i>v</i> Syndicate Pub. Co.....	2086	III.
Orders as to Exhibits:		
Merriam <i>v</i> Cupples & Leon Co.....	2087	III.
Merriam <i>v</i> Syndicate Pub. Co.....	2088	III.
Stipulation as to Record on Appeal:.....	2089	III.
Stipulation to Abide Event.....	2091	III.
Stipulation for Certification of Record.....	2092	III.
Certificate	2093	III.



Answer.

3825

Further answering the defendant says that it has, before the institution of this suit, offered for sale and sold dictionaries with the title "Webster's New Standard Dictionary," which title is named in the bill of complaint. Defendant admits that said dictionary styled "Webster's New Standard Dictionary" is not the product, either literary or mechanical, of the complainant or of any one of its predecessors or of its corps of editors, authors or compilers, and that said dictionary is not one of the series of abridged or unabridged dictionaries of the complainant.

3826

Defendant further admits that Noah Webster is not the author of said dictionary and that said dictionary is not a copy or exact reproduction of any dictionary which has borne the name "Webster" in its title except that prior to the adoption and use by the defendant of said title "Webster's New Standard Dictionary" defendant had published the same dictionary with the title "Webster's New Illustrated Dictionary."

3827

Defendant admits that said dictionary "Webster's New Standard Dictionary" is not an exact copy or reproduction of any dictionary now or heretofore published by the complainant, but defendant denies that the designating title of said dictionary "Webster's New Standard Dictionary" is false and deceptive and alleges the fact to be that said dictionary is a revision of "Webster's Unabridged Dictionary," the copyright of which was issued in the year 1847 and which expired after the statutory renewal thereof in the year 1889, by virtue of which expiration of copyright there passed to the public the right to publish the copyrighted book or a revised edition thereof, together with the right to use the name or title

3828

Answer.

3829

thereof, including the name "Webster" as the name or title of such dictionary or revision.

3830

Defendant denies that it has published said dictionary in manner and form or in imitation of any one of complainant's dictionaries, or has printed and bound copies thereof for the purpose of making them resemble any one of the dictionaries published by complainant, but says that it has printed and bound said dictionaries in the form usually employed by all publishers of dictionaries of the general style and type of said dictionary, and that it has used only proper words and characters and those which it had a right to use upon the title pages and front covers and backs of copies of said dictionary, entitled "Webster's New Standard Dictionary."

3831

Defendant says that it heretofore acquired from Dr. Louis Klopsch the plates and copyright of and all rights held by him in and to a dictionary copyrighted in 1904 by said Klopsch under the title "The Crown Dictionary of the English Language, based upon the Unabridged Dictionary of Noah Webster, LL. D.," etc., etc.; that thereafter said dictionary was copyrighted under the style "Webster's New Illustrated Dictionary of the English Language, based upon the Unabridged Dictionary of Noah Webster, LL. D.," and was published by the defendant under

3832

the title on the cover of "Webster's New Illustrated Dictionary"; that thereafter said dictionary was published under the same title with the addition upon the cover thereof of the words, "With New United States Census"; that thereafter said dictionary was copyrighted under the title "Webster's New Standard Dictionary, Illustrated, based upon the Unabridged Dictionary

Answer.

3833

of the English Language of Noah Webster, LL. D.,” etc., etc., and was published with the name on the back and front of cover, “Webster’s New Standard Dictionary, Illustrated, with New United States Census,” and that thereafter said dictionary was copyrighted under the title “Webster’s New Illustrated Dictionary, with United States Census and Maps, based upon the Unabridged Dictionary of Noah Webster, LL. D.,” etc., etc., and was published with corresponding title upon the front and back of cover thereof and that at the time of the filing of the bill of complaint herein the dictionary was being published and sold by the defendant with the last named copyright title on the title page and back thereof, and not with the title “Webster’s New Standard Dictionary,” as stated in the bill of complaint.

3834

Defendant denies that in the publication of said dictionary offered under the title of “Webster’s New Standard Dictionary” or “Webster’s New Illustrated Dictionary,” it omitted from the copyright notices thereon the notice showing copyright in the year 1904 in order, as stated in the bill of complaint, to make it appear that said dictionary was a new production, or that it substituted, in lieu of such copyright notice in 1904, a copyright notice bearing the date 1911, and denies that either the purpose or the effect of this change was to conceal the true origin and identity of said dictionary or to lead purchasers and the public in general to buy said dictionary in the belief that it is a new dictionary, first published in the year 1911, and that it is one of the complainant’s series of Webster’s Dictionaries, but defendant says that, on the contrary, it is

3835

3836

Answer.

3837

not uncommon to omit from published books some of the copyrights which may have been issued thereon and to substitute only the later ones issued, and that the reason in this instance for the omission of the copyright notice of the year 1904 was and is that prior to the transfer of said copyright plates, etc., of said dictionary of said Klopach to the defendant, as hereinbefore recited,

3838

said Klopach had attempted to grant, and claimed to have granted, certain restricted rights in said copyrights and plates to a party other than this defendant, and that this defendant purchased and took over the same, subject to such possible rights as said third party then might have in said copyright and plates; that said third party has issued an edition of said "Crown Dictionary" under its alleged rights derived from said Klopach, and this defendant therefore omitted notice of the copyright of 1904, rights in which said third party claimed to possess as aforesaid, because it did not wish to publish and advertise a copyright claimed by a competitor.

3839

That in the publication and sale of its dictionary, whether under the title of "Webster's New Illustrated Dictionary" or "Webster's New Standard Dictionary," this defendant has at no time sought to conceal its identity and origin or to lead purchasers and the public in general to buy it in the belief that it was a dictionary or a reprint of a dictionary at any time published by this complainant or its predecessors, but on the contrary it has at all times indicated on title pages and in advertisements the true origin and identity of said dictionary and that, in pursuit of its purpose to thus distinguish said dictionary from any dictionary published by this complainant, this

3840

Answer.

defendant before the institution of this suit against it by the Harrison Company, caused to be inserted on the title page of said dictionary the following language, to wit:

"This dictionary has been revised and brought up to the present date in accordance with the best authorities and is now published by the original publishers of 'Webster's Dictionary' or by their successors."

And at the institution of this suit all the dictionaries, bearing the title as then adopted of "Webster's New Illustrated Dictionary," which were being issued by the defendant have the inscription above recited and also have upon their title pages the words "Based upon the Unabridged Dictionary of Noah Webster, LL. D., revised and edited under the direction of Edward T. San, LL. D. and Charles Loomis Stuart, B. A." and also have upon the title page the publisher's notice "Published by the Syndicate Publishing Company, New York, 1911" and at the bottom of the back of cover the name "Syndicate Publishing Company."

Defendant says that its dictionaries bearing the title "Webster's New Illustrated Dictionary" or "Webster's New Standard Dictionary" have been and are being advertised, but it denies that its said advertisements have any of them been false, misleading or misleading or have tended in any way to deceive the public or to pass off said dictionaries as and for the dictionaries of the complainant.

And further answering defendant denies that the name "Webster's" is or ever was or, as a matter of law, could be the "trade mark" of com-

3845

Answer.

plainant as alleged in its amendment to its bill of complaint and further denies that complainant ever adopted said name as a trade-mark as therein alleged.

3846

Defendant does not know and therefore neither admits nor denies that at sundry dates heretofore complainant has registered in the Patent Office of the United States certain alleged trade-marks which it describes in its said amendment as consisting of the "Word 'Webster's' in combination and association with other words and features" and it leaves complainant to attempt to prove the same or not as it may be advised. But defendant denies that, if such registrations have been made and if the same constitute valid trade-marks of the complainant, it, the defendant, has in any manner infringed, copied or imitated said alleged trade-marks and denies that such combination of the word "Webster's" with other words and features has made the word itself a trade-mark.

3847

Further answering defendant says that complainant sets forth and alleges in its bills of complaint no ground of action for which it is entitled to look to the defendant for damages and to ask that the defendant be required by this Court to compensate him and that defendant has not infringed or trespassed upon any right of the complainant in its publication of dictionaries or the use of the name "Webster" in connection therewith.

3848

Defendant denies that the complainant has any exclusive right to the use of the name "Webster" in the titles of dictionaries which entitles it to an injunction as asked for against this defendant, restraining the defendant from using the word

Answer.

3849

"Webster" "in connection with the publication and sale of its said dictionaries as the name of or as descriptive of such dictionaries" and denies that the defendant has any right to ask for an injunction as prayed for in its bill, restraining the defendant from "offering for sale its said dictionaries under the name or title of "Webster's New Standard Dictionary" and submits that it has the right to use the name "Webster" as a part of the title of its dictionary so long as it distinguishes such dictionary from dictionaries published by the complainant which it alleges it has done heretofore and is now doing.

3850

Answers to interrogatories.

Answering the interrogatories attached to the bill of complaint, defendant says to the first,

1. "Yes."

3851

To the second interrogatory the answer is,

2. "On advice of counsel we decline to state how many of said dictionaries have been sold by the defendant or how many it now has on hand as the information sought, if now furnished, will not aid in the determination and is not pertinent to the issues raised by the bill of complaint and should therefore not how be supplied."

3852

This defendant prays the same advantage of this its answer as if it had pleaded or demurred to the bill of complaint and prays leave and asks

3853

Answer.

to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

SYNDICATE PUBLISHING COMPANY,
Defendant.

GEORGE F. BEAN.

STRONG & CADWALADER.

3854 Solicitors & of Counsel for Defendant.

(Endorsed) U. S. Circuit Court, Southern District N. Y.

Filed Dec. 30, 1911, John A. Shields, Clerk.

3855

DISTRICT COURT OF THE UNITED
STATES,

4001

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

AGAINST

CUPPLES & LEON COMPANY,
Defendant.

Equity 8-161.

4002

G. & C. MERRIAM COMPANY,
Complainant,

AGAINST

SYNDICATE PUBLISHING COM-
PANY,
Defendant.

Equity 8-162.

4003

TESTIMONY taken by and on behalf of
the defendants for final hearing, pur-
suant to the annexed notice by agreement
of Counsel, under the 67th Rule in Equity,
as amended, and in accordance with the
Statute in such cases made and provided,
and pursuant to the rules and practices
of this Court, before John A. Shields, Esq.,
a Standing Examiner of this Court, at the
offices of Messrs. Gould & Wilkie, 2 Wall
Street, in the Borough of Manhattan,
City of New York, beginning on the 26th
day of April, 1912 at 11:00 o'clock in the
forenoon.

4004

4005

Max Hesslein—Direct

APPEARANCES:

The Examiner

WILLIAM B. HALE, Esq.,
For Complainant.

LAUREN CARROLL, Esq.,

Of Counsel for Defendant Syndicate Publishing Company and for Defendant Cupples & Leon Co.
4006

MAX HESSLEIN, a witness called by and on behalf of the defendants, having been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

4007 Q. 1. Please state your name, age, residence and occupation? A. Max Hesslein; age, 45; residence, Newark, New Jersey; occupation, buyer of books and stationery for Hahne & Company, Newark, N. J.; O'Neill Adams Company, New York; Stewart & Company, Baltimore.

Q. 2. How many years have you been in the book business? A. Twenty-seven years.

Q. 3. Have you handled dictionaries? A. I have.

4008 Q. 4. Very largely? A. Yes.

Q. 5. Among other dictionaries have you handled many Webster's dictionaries? A. Yes, a great many.

Q. 6. When you hear a Webster's dictionary spoken of do you connect it with any one publisher? A. Decidedly not.

Max Hesslein—Direct.

4009

Q. 7. From your experience in the book business can you say whether or not the ordinary purchaser of Webster's dictionaries associates them with any one particular publisher? A. No, they do not.

Q. 8. What does the ordinary customer ask for? A. The majority of customers will ask for a dictionary. Then the clerks will show them several dictionaries. At times it is Webster's other times it is Funk & Wagnall's; and we show them other dictionaries. 4010

Q. 9. Suppose a customer comes in and asks for a Webster's dictionary, would you know what book he meant? A. No, we would not. Because there are too many different kinds of Webster's dictionaries.

Q. 10. What would you say to such a customer or ask him? A. Well, we generally show them the dictionaries, and they would say, "I want a handy dictionary; I want a vest pocket dictionary or I want some kind of a dictionary of that kind;" whatever they may want. There have been times when we have shown the large Webster's Unabridged Dictionary and they ask us if the same is the complete dictionary. Some people have been misled in their belief when they buy these Webster's Unabridged dictionaries that they are buying the up-to-date Webster's Dictionary. 4011

Q. 11. What book are you talking about when you speak of Webster's Unabridged Dictionary? A. A reprint dictionary of the 1864 edition. 4012

Q. 12. Who is this book published by? A. Some we purchase from George M. Hill & Company, various publishers, and the Merriam Company and G. S. Ogilvie.

Q. 13. Have you one of these dictionaries with you? A. Yes.

4013

Max Hesslein—Direct.

(Witness produces.)

MR. CARROLL: I offer the book in evidence. Marked Defendant's Exhibit No. 1, JAS Exr."

Q. 14. Who published this Defendant's Exhibit No. 1? A. The Merriam Company.

Q. 15. Where did you get it from? A. Through Reilly & Britton, Chicago.

4014

Q. 16. Do you know where they bought it? A. Well, I believe they bought it from the Merriam Company.

Q. 17. What makes you think they bought it from the Merriam Company? A. I always understood that they were the agents of the Merriam Company.

Q. 18. Are many of these books sold in the trade? A. Well, I would not say—quite a good many, I guess.

4015

Q. 19. How long have you known of this book? A. Do you mean the Merriam book?

Q. 20. Yes. A. I think the last fifteen or seventeen years.

Q. 21. You said before that people were misled by books of this kind; why? A. Because they believe they are buying an edition which is up-to-date; what the title page indicates.

4016

Q. 22. How does it indicate it is up to date? A. By the copyright on the back of the book. That is speaking as far as the bookseller knows it; but the customer only sees the year which is marked on the title page, and believes that that is a dictionary up-to-date.

Q. 23. What is the date on the title page on that book? A. 1906.

Q. 24. Isn't it a 1906 book? A. Well, no, I would say not.

Max Hesslein—Direct.

4017

Q. 25. Is it substantially the same book that was originally published in 1864? A. It is, the main portion of it, of the original book published in 1864.

Q. 26. Do you know whether this book was published from the same plates as the 1864?

No answer.

Q. 27. Do you know? A. Well, I understood so, yes.

4018

Q. 28. Is it commonly so understood in the trade?

MR. HALE: Objected to as incompetent.

A. Yes, in the trade it is understood it is the reprint of 1864.

Q. 29. What does the ordinary purchaser of a dictionary expect to use the book for? A. For the spelling.

4019

Q. 30. You don't mean that the purchaser of the large unabridged dictionary of the high price expects to use it solely for spelling, do you?

MR. HALE: Objected to as leading.

A. In the majority of cases.

Q. 31. What does the ordinary purchaser of any book think about, the contents or the publisher?

MR. HALE: Objected to as leading.

4020

A. The contents.

Q. 32. Has it been your experience that the ordinary purchaser of any book knows or cares anything about the publisher? A. You are speaking about any book?

Q. 33. Yes. A. They do not.

4021

Max Hesslein—Direct.

Q. 34. Are purchasers of abridged Webster's dictionaries any exception to this rule? A. No, sir.

Q. 35. What does the ordinary purchaser of an abridged Webster's dictionary expect to get? A. An up-to-date dictionary.

4022

Q. 36. What does the name "Webster" in the title of the dictionary mean to him? A. Nothing beyond that the name of "Webster" being associated with the dictionary.

Q. 37. Does he regard the name "Webster" as an artificial or arbitrary name?

MR. HALE: Objected to as leading, which is especially objectionable in a line of examination calling for opinion or expert evidence and results in putting counsel's words and opinions into the record instead of those of the witness.

4023

A. I don't understand the question.

Q. 38. Do they connect the name "Webster" with any particular person as connected with the origin of the book, or do they consider it as a title, like the title of a novel? A. No, they do not.

Q. 39. What do they do? A. They simply connect the name Webster with the dictionary.

4024

Q. 40. Do you mean that the name "Webster" is practically synonymous with the word "dictionary?" A. No, I would not say that.

Q. 41. What does that mean then? A. Only to the people who may come in and have in their mind in specifying the Webster's dictionary.

Q. 42. What different Webster's dictionaries have you dealt in or known of? A. Webster's Peabody Dictionary, published by Hurst & Company.

Max Hesslein—Direct.

4025

Q. 43. When did you first know that book? A. Over twenty years ago.

Q. 44. Did you know of it before 1889? A. I think I did.

Q. 45. Will you give a list of Webster's dictionaries of which you have known with their publisher? A. Webster's New Standard Dictionary of the English Language for Grammar and Common School Grades, published by Laird & Lee; Webster's Universal Self Pronouncing Dictionary by Winston & Company; Webster's Home School and Office Dictionary, Barse & Hopkins; Webster's New Century Dictionary, Cupples & Leon; Webster's Reliable Dictionary, Arthur Saalfield; Webster's New Standard Dictionary, Syndicate Publishing Company; Webster's Concise Dictionary, A. L. Burt; Webster's Pictorial Dictionary, Popular Publishing Company; Webster's Pronouncing Dictionary by Neely & Company; Webster's School and Office Dictionary by Thompson & Thomas; Webster's Unabridged Dictionary, George M. Hill & Company; Webster's People's Dictionary by Laird & Lee; Webster's School Dictionary, published by Donohue.

4026

4027

Q. 46. Have most of these books been advertised. A. Yes.

Q. 47. Can you name some of the forms of advertising that the publishers of these books or dealers in them have used?

4028

MR. HALE: Objected to, on the ground that the advertisements themselves should be produced.

A. In the trade papers; in the others, in the newspapers.

4029

Max Hesslein—Direct.

Q. 48. Do these publishers send out catalogues?
A. Yes.

Q. 49. And in these catalogues do they devote space to their dictionary? A. They do.

Q. 50. What methods of advertising are pursued by retail dealers in these books? A. Mostly by newspaper advertising.

4030

Q. 51. Could you give any estimate at all of the amount of money that has been spent in advertising these books which you have mentioned?

MR. HALE: Objected to as incompetent, and calling for a mere guess as to a matter of fact, upon which the witness is not shown to have any information.

A. I cannot.

4031

Q. 52. You have been in very close touch with the various advertisements and methods of advertising which have been used by these publishers, and also by the G. & C. Merriam Company?

A. I have.

Q. 53. How far back does your knowledge of this advertising go? A. Since 1890.

4032

Q. 54. You have stated that you could not give any estimate at all as to the cost of this advertising; can you state with reasonable certainty the relative amount of advertising that has been done since 1890 by the G. & C. Merriam Company and by other publishers and dealers? A. I cannot, with the exception that I believe I have seen more advertising from others than from the Merriam Company in that time.

Q. 55. Have you seen most of the advertising of Webster's dictionaries which has appeared since 1890?

Max Hesslein—Cross.

4033

MR. HALE: Objected to as calling for something which the witness obviously cannot know.

A. I have not.

Q. 56. Of the advertising which you have seen, was more of it devoted to the G. & C. Merriam books or the Webster's dictionaries published by other publishers? A. More by other publishers.

4034

DIRECT EXAMINATION CLOSED.

CROSS EXAMINATION by Mr. Hale:

x Q. 57. In speaking of the relative amount of advertising, did you have in mind the expensive newspaper advertising of a dictionary in connection with a coupon scheme within the last year or year and a half? A. No, sir; I have taken it all from the trade papers and the newspapers; of various dictionaries.

4035

x Q. 58. You gave a list of various dictionaries using the name "Webster"; when did you prepare that list? A. Oh, about within a week.

x Q. 59. From what source did you make it? A. From the record of my actual purchases and some from the trade papers.

Q. 60. You did not actually make it from the books themselves? A. Well, I give the list of the books I really know.

4036

Q. 61. You did not have all the books named by you present before you at any one time in making this list? A. Some of them, yes; others, no.

Q. 62. Which ones did you have before you? A. The Webster's School and Office Dictionary published by Thompson & Thomas; Webster's Self Pronouncing Dictionary published by Winston;

Max Hesslein—Cross.

4037

Webster's New Century Dictionary; Webster's Peabody Dictionary; those are the ones I think I had before me. The others were more or less in stock.

Q. 63. At what place were those dictionaries; at what store?

4038

Mr. CANNON: Objected to as incompetent and immaterial, and I direct the witness not to answer until the Court orders it is material.

Mr. HALL: The Examiner is requested to certify this question to the Court for a ruling, as to the propriety of the question.

Q. 64. All of the dictionaries named by you, excepting the one called "Webster's Unabridged Dictionary," were small or abridged dictionaries, were they not? A. Not all.

4039

Q. 65. Which were not? A. The dictionary published by George M. Hill, which I have mentioned here.

Q. 66. That is the one I referred to as Webster's Unabridged. With this exception all the others are small dictionaries? A. Smaller than the unabridged dictionary, of course.

4040

x Q. 67. Do you know whether or not some of these dictionaries are not the same book; that is, the literary contents of them are the same, but with changed names and changed publishers? A. Yes.

x Q. 68. That is to say, some of them were first published by one publisher under a given name, and subsequently were issued by another publisher under a different title or name? Do you know that to be a fact in some instances? A. In some instances, yes.

Q. 69. Do you have whether some of the books owned by you have been used to give away as advertisements and with advertising matter printed upon them? A. That I could not say.

Q. 70. You have no recollection of seeing any such books? A. No.

Q. 71. Have you ever personally sold dictionaries to customers? A. I have.

Q. 72. And you have carried in stock Webster dictionaries published by the Merriam, and at the same time dictionaries using the name "Webster" which were not published by the Merriam? A. We have.

Q. 73. When a customer came in under those circumstances and asked for a small Webster dictionary, what was the usual course of procedure? A. We showed them various dictionaries published by various publishers.

Q. 74. You mean you showed them the stock of dictionaries bearing the name "Webster" and allowed them to select for themselves? A. In a great many instances, yes.

Q. 75. For how long have you been a buyer for the various concerns mentioned, or what was your course? A. Twenty-seven years.

Q. 76. Do you deal directly with the various publishers in buying your stock? A. By correspondence.

Q. 77. And in the course of this business you have become familiar with books and their publishers? A. Yes.

Q. 78. I presume much more so than the ordinary or average purchaser of books? A. Yes.

Q. 79. When did you first hear of Webster's dictionary? A. Well, I think since 1855.

Q. 80. What does the date in the publisher's

Max Hesslein—Cross.

4045

imprint upon the title page mean? A. In regard to any one particular book?

x Q. 81. I want the general custom of the publishing trade as to use of dates in the imprint generally? A. That it is a new book.

4046

x Q. 82. Don't you know that it is practically a universal custom to indicate the date of printing the particular book, and to change the date of imprint from year to year?

MR. CARROLL: Objected to as assuming a state of facts not proved.

A. In some cases.

x Q. 83. At any rate, it is not at all an unusual custom, is it? A. No.

4047

x Q. 84. Referring to Defendant's Exhibit No. 1, you know, do you not, that the title page is copied substantially from the title page of the 1864 edition of Webster's dictionary, do you know? A. Yes.

x Q. 85. This exhibit upon its title page purports to be the 1864 edition, with a supplement of more than 5,000 words and phrases, is that correct?

MR. CARROLL: Objected to; the book itself is the best evidence.

A. Yes.

4048

x Q. 86. And upon the back of the title page it contains copyright notices dated in the years 1864, 1879, 1892 and 1903; does it not? A. Yes, sir.

x Q. 87. This book also contains, beginning at page 1529, a supplement of additional words and meanings as referred to upon the title page, which were not in the 1864 edition of that book, is that correct?

Max Hesslein—Cross.

4049

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial; as leading, and on the ground that the book itself is the best evidence of all these facts.

A. Yes.

MR. HALE: I desire to read in the record the heading of the supplement referred to, which is as follows:

"Supplement of additional words and definitions to the 1864 edition of Webster's Unabridged Dictionary."

4050

x Q. 88. Do you know what, if any, other changes were made in the text of that book before it was published and copyrighted in the year 1903? A. No, I do not.

x Q. 89. You have stated that some of the dictionaries named by you are the same book under different names and with different publishers. The Webster's New Century Dictionary of Cupples & Leon and the Webster's New Standard of the Syndicated Publishing Company, which are the books involved in this case, are substantially the same identical book, are they not? A. I was led to believe that there are a few words in one dictionary which are not in the other.

4051

x Q. 90. You mean a few plate corrections, something of that sort? A. Well, words.

x Q. 91. I presume you also know that these books had still another name and another publisher before they appeared under the titles given by you?

4052

MR. CARROLL: I object to padding the record with questions which relate to admitted facts.

4053

Max Hesslein—Re-Direct.

A. So I was informed.

RE-DIRECT EXAMINATION by Mr. Carroll:

4054

R-D. Q. 92. Aside from the two books just mentioned, namely the one published by the Syndicate Publishing Company and the one published by Cupples & Leon, which are the ones involved in this suit, do you know of any other instances in the list of books given by you where the same book has appeared under two different names and as coming from two different publishers. A. Yes, I do.

R-D. Q. 93. Will you name all of those instances? A. Webster's Vest Pocket Dictionary, which was published—

4055

R-D. Q. 94. This question is only directed toward an explanation of the list which has appeared on the record. I withdraw the other question and repeat the question in this form.

Please look at your answer to Q. 45 appearing on page 1007 of the testimony and state whether or not there are any other instances in which the same books have appeared in two different names, and with the imprint of two different publishers? A. The Webster's Home & School Dictionary published by Barse & Hopkins, but I cannot tell you what name it was under.

4056

R-D. Q. 95. You seem to misunderstand the question. You have stated that Webster's New Standard Dictionary published by the Syndicate Publishing Company and Webster's New Century Dictionary published by Cupples & Leon mentioned in your answer to Q. 45 are substantially the same book. This is an admitted fact in this case; are there any other instances in the list given

Max Hesslein—Re-Cross.

4057

by you in answer to Q. 45 of substantially the same book appearing under a different title? A. No, they are all different books.

R-D. Q. 96. What does the average customer think that the date on the bottom of the title page means? A. That he is purchasing an up-to-date book.

R-D. Q. 97. If the date on the bottom of the title page is 1810, do you still think the purchaser would understand that to mean an up-to-date book? A. No.

4058

R-D. Q. 98. Do you, then, wish to correct your answer to R-D. Q. 96? A. That it is published in that year.

R-D. Q. 99. Does the average customer ever look at the copyright notice on the back of title pages? A. They do not.

R-D. Q. 100. Would the date 1906 on the title page of a reference book indicate to the average customer that it was a book revised down to 1906? A. Yes.

4059

RE-CROSS EXAMINATION BY MR. HALE:

R x Q. 101. In the list of dictionaries using the name "Webster" that you gave in answer to direct question 45 you name "Webster's School and Office Dictionary, by Thompson & Thomas." You know, do you not, that that same identical book is issued under several titles by several publishers, do you not?

4060

MR. CARROLL: We are willing to admit that some of the books which appear in this list have been published with some changes by other publishers under different names. Mr. Hesslein has stated, however, that the only duplicates on this list, as given by

4061

Max Hesslein—Re-Cross.

him are the two books published by Syndicate Publishing Company and by Cupples & Leon. I object to this line of questions, therefore, as immaterial and as unnecessary for any purpose.

A. No, I do not.

4062

R x Q. 102. Don't you know that Donohue's Webster's School Dictionary, which you have named, was formerly published by Allison, under the name of Allison's Webster's Dictionary, and prior to that under the name of Allison's American Pictorial Handy Lexicon, not using the name "Webster"; do you know that fact? A. I do not.

4063

R x Q. 103. Do you know that Webster's Concise Dictionary, published by A. L. Burt, is nothing but a reprint of this same Allison's Dictionary.

MR. CARROLL: Objected to as assuming a state of facts in no way proven.

A. No, sir.

R x Q. 104. You do know, however, that there are on sale under different titles and with different publishers several of these so-called Webster's dictionaries to which you have referred?

4064

MR. CARROLL: Objected to as having been already fully answered, and as irrelevant and immaterial.

A. Yes.

DEPOSITION CLOSED.

MAX HESSLEIN.

Subscribed and sworn to:

JOHN A. SHIELDS,

Standing Examiner.

H. Josephine Pfanstiehl—Direct.

4065

H. JOSEPHINE PFANSTIEHL, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Please state your name, age residence and occupation. A. H. Josephine Pfanstiehl; age, mature; residence, 233 Sixth Ave., Newark, N. J.; occupation, assistant buyer, Hahne & Co.

4066

Q. 2. How long have you been in the book business? A. About 25 years.

Q. 3. In what capacity have you been acting during that period? A. Always in and around books; never anywhere else.

Q. 4. Have you during most of that time sold books personally directly to customers? A. Yes.

Q. 5. Can you state what the ordinary purchaser means when he asks for a Webster's Dictionary? A. A dictionary; that is all, just what they call for. A reference book.

4067

Q. 6. When a customer asks for a Webster's Dictionary do you know at once what book he or she wants? A. No.

Q. 7. What do you do when a customer comes in and asks for a Webster's Dictionary? A. We try to find out for what purpose it is wanted.

Q. 8. Does the average purchaser asking for a Webster's Dictionary say anything at all about the publisher? A. No.

4068

Q. 9. From your experience would you say that the average purchaser of any book thinks or cares about the publisher? A. Not to any great extent.

Q. 10. What kind of Webster's dictionaries seem to be most popular? A. What we call the handbook size; handy size.

4069

H. Josephine Pfanstiehl—Direct.

Q. 11. Do you remember any instances where customers have given their reasons for selecting one or the other dictionary among those which you show them? A. Price would make—I think price is what governs the decisions very often.

Q. 12. Would you say that the question of the publisher of a small abridged Webster's dictionary ever governs the decisions of the purchaser? A. No.

4070

Q. 13. Has it been your experience that the question of publisher of such a dictionary enters into the question at all? A. No.

Q. 14. Do the customers say what they want to use the small dictionaries for? A. Oftentimes, yes.

Q. 15. From these statements will you tell us what they usually want such a dictionary for? A. For school use.

4071

Q. 16. I show you a book entitled Webster's National Pictorial Dictionary, published by G. & C. Merriam, Springfield, Mass., bearing upon its title page the date 1881 and bearing one copy-right notice, dated 1867. Have you ever seen that book before? A. Yes.

MR. CARROLL: I offer the book in evidence. Marked "Defendant's Exhibit No. 2, JAS, EXR."

4072

Q. 17. Is this your book? A. Yes.

Q. 18. When did you purchase it? A. I could not say; it has been in the home a good many years.

Q. 19. When you purchased this book did you know as much about the book business as you do now? A. No indeed.

Q. 20. What did you understand the date on

H. Josephine Pfanstiehl—Direct.

4073

the title page to mean? A. I didn't purchase the book; my father bought it.

Q. 21. What do you think the date on the imprint of a reference book means to the average customer? A. It means an up-to-date book; the information is that it is accurate. I mean that the date is very often misleading on the title page in a reference book.

Q. 22. You mean that the date 1881 appearing on the title page of Defendant's Exhibit No. 2 would lead the average customer to believe that the contents of this book are revised and brought up to the date 1881?

4074

MR. HALE: Objected to as incompetent and immaterial and as calling for opinion only.

A. Yes.

Q. 23. And do you consider the date given on that title page as misleading? A. On a reference book.

4075

Q. 24. Why is that? A. Usually it is dated years later than the copyright.

Q. 25. On this particular book Defendant's Exhibit No. 2 is the date 1881 appearing on the title page misleading?

MR. HALE: Objected to as calling for opinion and as wholly irrelevant and immaterial.

4076

A. Yes.

Q. 26. Why? A. The date of the title page is years after the copyright.

Q. 27. How many years? A. The difference between 1867, the date of the copyright, and 1881 on the title page.

4077

H. Josephine Pfanstiehl—Cross.

CROSS-EXAMINATION by Mr. Hale:

x Q. 28. It is a custom of the trade, is it not, to put the date of the printing of the particular volume in the publisher's imprint, and that is what that date actually refers to, does it not? A. Yes.

4078

x Q. 29. Can you name any works which afford a good illustration of that other than the one before you? A. As a class, I should say reference books.

x Q. 30. In your book experience covering twenty-five years have you always handled the Merriam's Webster's dictionary? A. As far as I can remember.

x Q. 31. And during that whole time have you also handled other dictionaries using the name Webster which were not published by the Merriams? A. Yes.

4079

x Q. 31. When a customer comes in and asks for a small Webster dictionary, describe the usual and ordinary course of the transaction? A. We interrogate the customer and find out the price they are willing to pay or for the purpose it is wanted; they cover every branch of school work; they are divided up into all kinds.

4080

x Q. 32. You then show them dictionaries of about the size and price apparently desired and allow them to select the particular one? A. Half a dozen or more are shown them.

x Q. 33. Do you usually explain to such customers the difference between the Merriam editions and the editions of other publishers? A. No.

x Q. 34. And have you upon occasion sold to persons calling for a Webster's school dictionary for use in the schools by children or young people

(*H. Josephine Pfanstiehl—Re-Direct.*)

4081

dictionaries not published by the Merriams? A. Yes.

x Q. 35. That is an ordinary occurrence? A. Yes, price would often regulate that.

x Q. 36. And sometimes you would sell to one person a dictionary of one publisher and to another person a dictionary of another publisher? A. Yes.

x Q. 37. Although in those cases they asked for a Webster's dictionary? A. Yes.

4082

x Q. 38. Of course you do not know and did not tell such customers whether or not the system of spelling and definitions and pronunciation used by these various dictionaries was the same or different? A. No.

x Q. 39. You are associated in business with Mr. Hesslein, the previous witness? A. Yes.

RE-DIRECT EXAMINATION by Mr. Carroll:

4083

R-D. Q. 39. You have stated that publishers mean to indicate by the date which appears on the title page the year when the book was printed? A. Yes, it means the year it was printed, but not the year it was copyrighted; that is what the date on the title page means.

R-D. Q. 40. Publishers mean to indicate then by the date on the title page the date of printing and not the date of the contents? A. Yes.

R-D. Q. 41. Does the ordinary customer so understand the date on the title page? A. No, sir.

4084

R-D. Q. 42. A date appearing therefore on the title page of a reference book, some fourteen years later than the latest copyright obtained on the contents of that book, would be deceptive to the average purchaser?

4085

(H. Josephine Pfanstiehl—Re-Cross.)

MR. HALE: Objected to as leading and argumentative.

A. Yes.

RE-CROSS EXAMINATION:

4086

R x Q. 43. Suppose there had been no intervening editions between the copyright date and the date of printing the book in question, where would the deception come in?

MR. CARROLL: Objected to as assuming a state of fact not proved and calling for a conclusion of this witness about a purely hypothetical state of facts.

A. It would still mean a book up-to-date.

4087

R x Q. 44. Have you ever sold any copies of the book called Webster's Dictionary published by Cupples & Leon? A. I have not sold them personally, I have seen them sold.

R x Q. 45. You mean the book is carried in stock in your store and sold by your clerks in the usual way? A. Yes.

R x Q. 46. You have spoken of price being an important consideration; what is the highest price at which this book has been sold (referring to Cupples & Leon Webster's New Century)? A. From two to two fifty.

4088

R x Q. 47. And what was the lowest price for the same book? A. Thirty-nine cents.

x Q. 48. Do you mean to say that you know of sales actually made at the price of \$2.50? A. Yes.

x Q. 49. Do you also sell in your department and keep in stock the book called Webster's New Standard Dictionary published by the Syndicate Publishing Company or the same book under the

(*H. Josephine Pfanstiehl—Re-Re-Direct.*)

4089

name of Webster's New Illustrated Dictionary?
A. We have sold books published by the Syndicate Publishing Company.

x Q. 50. You mean dictionaries published by the Syndicate Publishing Company? A. Yes.

x Q. 51. At what prices? A. Fifty cents to one fifty approximately.

RE-RE-DIRECT EXAMINATION by Mr. Carroll:

4090

R-R-D Q. 52. Can you explain the different prices at which the book, the New Century Dictionary was sold? A. The difference in binding.

R-R-D Q. 53. Then the thirty-nine cent and \$2.50 book although they may have had substantially the same contents, were differently bound and on different paper?

MR. HALE: Objected to as leading.

A. Yes.

4091

DEPOSITION CLOSED.

H. JOSEPHINE PFANSTIEHL.

Subscribed and sworn to:

JOHN A. SHIELDS, Standing Examiner.

ADJOURNED to Friday, May 3rd, 1912, place to be appointed, at 11 o'clock.

4092

4073

Luther M. Baskin—Direct.

New York, May 2nd, 1912.

Met pursuant to adjournment.

Present: Counsel as before, and also George F. Horn, Esq., of counsel for the Syndicate Publishing Company.

4074

LUTHER M. BASKIN, a witness called by and on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Horn:

Q. 1. What is your name, age, residence and occupation? A. My name is Luther M. Baskin; my age is 44; my residence is 530 West 53rd Street, New York City; occupation, vice-president of the Syndicate Publishing Company.

4075

Q. 2. Are you the Mr. Baskin who has given an affidavit heretofore in this case? A. I am.

Q. 3. Did you at one time, and, if so, when or about when, make a canvass of about one hundred persons in New York City for the purpose of ascertaining what their knowledge was regarding the use of the name "Webster" in the title of the dictionary so far as it indicated the source of publication of such dictionary? A. I made that canvass just prior to February 20th, 1912.

4076

Q. 4. What method did you adopt in selecting the persons whom you thus canvassed? A. I took a notion mostly the other, ranging between 42nd Street and down toward 23rd Street and between Fifth Avenue and Broadway. I endeavored to make a canvass of each and every business house, and some cases I did not get to in

business practice is some business for the reason that the heads of the Department were not in and I tried to confer my services to those occupying the better positions in the business where I could, including proprietors, managers, authors and others.

Q 3. Were relations as not you discriminated in the persons interviewed or took them as such? A. I made no discrimination whatever, but took the people just as I came to them, of the classes above referred to.

Q 4. How far, if at all, did you know the people you interviewed before interviewing them? A. I had no personal acquaintance with any of them. I, however, interviewed on my route the business with which we do business, but was not personally acquainted with anyone in the bank. With that exception I had no personal acquaintance.

Q 5. Will you now state in substance, the way in which you approached the person interviewed and how you introduced the subject of your inquiry, and what, if anything, you said to him before asking him the questions which you had in mind to ask? A. My general method of introduction was to walk into a place of business and call for the proprietor or manager to begin with and then found him and introduced myself as Banks and stated that I desired to ask them questions, as a matter of general and private information, and that I would like to know, if they pleased, to answer them to the best of their ability, without asking me any questions in return a hearing or an answer.

Q 6. What questions did you then ask the person interviewed? A. (a) Do you know any of the publishers or who are the publishers of *Speech*?

4101

Luther M. Rankin—Direct.

ster's Dictionaries? (b) When you hear or see the name "Webster's Dictionary" on a dictionary does it indicate to you a dictionary published by any particular house or at any particular place? (c) Do you know any city or cities where any Webster's dictionaries are published.

4102

Q. 9. Have you since scheduled and summarized the answers which you received from the parties interviewed? A. I made a classification of the answers.

Q. 10. And besides that did you from memoranda which you made at the time of the interview make out a schedule showing exactly what each person interviewed said in answer to each of the questions? A. I did.

Q. 11. Was this schedule of answers incorporated in the affidavit which you have heretofore made in this case? A. It was.

4103

Q. 12. Does this schedule include all answers whether they were favorable or unfavorable to the contention of the defendant in this case relative to the knowledge of the public in the matter of the source of publication of Webster dictionaries? A. It includes the answer of each and every person interviewed.

4104

Q. 13. Please furnish that schedule here? A. I furnish the schedule which was incorporated in the affidavit I have already made and which I believe to be exact in every respect.

"(Marked in evidence, "Defendants' Exhibit Copy of Schedule produced by witness Rankin, J. A. S. Exr., May 3, 1912.)

Said schedule is by consent printed at this point instead of separately, and is as follows:

Exhibit: Schedule Produced by Witness Rankin. 4105

The persons, their addresses, occupations and the answers which each gave to the foregoing questions are as follows:

Jacob Bock, 159 East Houston St., Proprietor Bakery.

Question (a). No.

Question (b). No.

Question (c). No.

F. Ohebach, 30 East 21st St., Cigars, etc.

4106

Question (a). No.

Question (b). No.

Question (c). No.

F. Milgner, 37 West 21st St., Clerk Mercantile Land Co.

Question (a). No.

Question (b). No.

Question (c). No.

4107

Daniel F. Voorhees, 37 West 21st St., Book-keeper Mercantile Land Co.

Question (a). No.

Question (b). No.

Question (c). No.

F. Keane, 37 West 21st St., Clerk Mercantile Land Co.

Question (a). No.

Question (b). No.

Question (c). No.

4108

F. J. Guilfoyle, 1155 Broadway, Merchant Tailor.

Question (a). No.

Question (b). No.

Question (c). No.

4109 *Exhibit: Schedule Produced by Witness Rankin.*

G. Pommville, 1155 Broadway, Merchant Tailor.

Question (a). I couldn't tell you.

Question (b). No.

Question (c). All over the world.

B. Rosner, 1155 Broadway, Cashier Guilfoyle & Pommville, Merchant Tailors.

4110 Question (a). No.

Question (b). No.

Question (c). Should think they are published in all large cities.

W. Washburn, 1161 Broadway, Manager Regal Shoe Store.

Question (a). I do not.

Question (b). It does not. Don't know why it should, as anybody can publish Webster dictionaries.

4111

Question (c). No, sir.

W. N. Noville, 1161 Broadway, Assistant Manager Regal Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No. Never took time to look up the matter.

4112 L. Kapham, 1161 Broadway, Cashier Regal Shoe Store.

Question (a). No.

Question (b). No.

Question (c). About all large cities of the world.

Exhibit: Schedule Produced by Witness Rankin. 4113

J. Aitchison, 1167 Broadway, Optical Goods.

Question (a). I do not know. Suppose a good many people publish them; perhaps Funk & Wagnalls among others.

Question (b). No.

Question (c). Could be published in any city.

W. H. Mathews, 1169 Broadway, Asst. Mgr. 4114
G. S. Mahn Cigar Store.

Question (a). I do not.

Question (b). No.

Question (c). I don't recall any.

J. Fecher, 1175 Broadway, Manager Walk-Over Shoe Store.

Question (a). I believe they are free for any one to publish. 4115

Question (b). No.

Question (c). Suppose they are published in New York.

J. Diesel, 1175 Broadway, Clerk Walk-Over Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No.

Charles A. Haslacker, 1175 Broadway, Clerk 4116
Walk-Over Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No.

4117 *Exhibit: Schedule Produced by Witness Rankin.*

D. S. Beck, 1177 Broadway, Manager Beck Shoe Store.

Question (a). Don't know.

Question (b). No, sir.

Question (c). No, sir.

J. H. Canavan, 1179 Broadway, Manager Hicks' Fruit Store.

4118 Question (a). No.

Question (b). No.

Question (c). No.

M. A. Rein, 1179 Broadway, Cashier Hicks' Fruit Store.

Question (a). No.

Question (b). No.

Question (c). No.

4119 H. M. Murphy, 1183 Broadway, Asst. Ticket Agt. D. L. & W. Ry.

Question (a). No.

Question (b). No.

Question (c). No.

J. G. Bray, 1183 Broadway, City Ticket Agt. D. L. & W. Ry.

Question (a). No.

4120 Question (b). It indicates that it is not published by Funk & Wagnalls.

Question (c). No.

J. N. Perron, 31 East 27th Street, Manufacturing Chemist.

Question (a). I do not.

Exhibit: Schedule Produced by Witness Rankin. 4121

Question (b). No; would have to open up to see.

Question (c). Would say Philadelphia.

M. G. Keith, 1172 B'way, Mgr. National Cash Register Co. Store.

Question (a). No.

Question (b). No.

Question (c). No.

4122

L. R. Rounds, 1180 Broadway, Asst. Manager Poland Springs Co.

Question (a). Cannot say.

Question (b). No.

Question (c). No.

M. Furth, 1180 Broadway, Clerk Poland Spring Company.

Question (a). No.

Question (b). No.

Question (c). No.

4123

W. N. Lowrie, 1184 Broadway, General Passenger Agt. Great Northern Ry.

Question (a). No.

Question (b). No.

Question (c). No.

S. G. Linderbeck, 1184 Broadway, Chief Clerk Seaboard Air Line.

4124

Question (a). No.

Question (b). No; there are half a dozen publishers of Webster dictionaries.

Question (c). No.

4125 *Exhibit: Schedule Produced by Witness Rankin.*

J. F. Brodil, 1200 Broadway, Trunk Manufacturers.

Question (a). Don't know; there are so many of them.

Question (b). No, no.

Question (c). I think New York.

E. Murphy, 1204 Broadway, Cashier Shanley's Restaurant.

4126

Question (a). No.

Question (b). No.

Question (c). No.

A. Macfarland, 1216 Broadway, Agent New York Central Lines.

Question (a). Have an idea copyright has run out and anybody publishes them.

4127

Question (b). No.

Question (c). Would be merely guess work.

G. B. Ecker, 1218 Broadway, General Passenger Agt. Atlantic Coast Line.

Question (a). No.

Question (b). No.

Question (c). No.

4128

Charlotte McCormick, 31st St. & B'way, Cashier Drug Store.

Question (a). No.

Question (b). I have always thought most every publisher put them on the market.

Question (c). I suppose many of them are published in New York.

Exhibit: Schedule Produced by Witness Rankin. 4129

J. C. Dunn, 17 W. 32nd Street, Chief Clerk Aberdeen Hotel.

Question (a). No.

Question (b). No.

Question (c). No.

R. C. Daley, 17 W. 32nd St., Operator Aberdeen Hotel.

Question (a). No.

4130

Question (b). No.

Question (c). No.

Chester Alexander, 34th St. & B'way, Mgr. Rogers, Peet & Co.

Question (a). No.

Question (b). No.

Question (c). No.

W. B. Moore, 1240 Broadway, Druggist.

4131

Question (a). No.

Question (b). No.

Question (c). No.

E. J. Usk, 1205 Broadway, Manager Sarnoff Hat Co.

Question (a). No.

Question (b). No.

Question (c). No, sir.

W. F. Dougherty, 29th St. & B'way, Cashier Breslin Hotel. 4132

Question (a). No.

Question (b). No.

Question (c). No.

4133 *Exhibit: Schedule Produced by Witness Rankin.*

Chas. Gal, 1217 Broadway, Jeweler.

Question (a). No.

Question (b). No.

Question (c). No.

J. M. Lokitz, 1225 Broadway, Manager Kaufman's Hat Store.

Question (a). No.

4134 Question (b). No.

Question (c). No.

E. V. Bryant, 1255 Broadway, Manager Hanan & Son's Shoe Store.

Question (a). No; think anybody can publish Webster dictionary.

Question (b). No.

Question (c). No.

4135 M. Carroll, 1255 Broadway, Cashier Hanan & Son's Shoe Store.

Question (a). No; suppose any publisher can make them.

Question (b). No.

Question (c). No.

M. L. Norwich, B'way & 32nd St., Manager John David, Clothing.

4136 Question (a). No.

Question (b). Yes, but don't know who.

Question (c). No.

Charles Gaspard, 1259 Broadway, Manager Haberman's Drug Store.

Question (a). No, but I think there are several.

Exhibit: Schedule Produced by Witness Rankin. 4137

Question (b). I do not.

Question (c). Do not recall any.

S. L. Stern, 1259 Broadway, Cashier Haberman's Drug Store.

Question (a). I do not.

Question (b). No; any publisher can make Webster dictionaries. No patent on the word, I hope. 4138

Question (c). I do not.

Harry A. Noah, 11 & 13 W. 32nd Street, Fur Dealer.

Question (a). No.

Question (b). No.

Question (c). No.

Charles A. Sackett, 49 W. 33rd St., President Mutual Bank. 4139

Question (a). No.

Question (b). No.

Question (c). No.

Hugh N. Kirkland, 49 West 33rd St., Cashier Mutual Bank.

Question (a). No.

Question (b). No.

Question (c). No.

Eugene Galvin, 49 W. 33rd St., Asst. Cashier Mutual Bank. 4140

Question (a). No.

Question (b). No.

Question (c). No.

4141 *Exhibit: Schedule Produced by Witness Rankin.*

A. D. MacLeod, 1269 Broadway, Manager
Browning, King & Co., Clothing.

Question (a). No.

Question (b). No; if I bought a Webster
dictionary I would not
care who published it, if
it was a good dictionary.

4142 Question (c). I believe Lippincott's,
Phila., publish Webster
dictionaries.

R. B. Harris, 1269 Broadway, Floor Mgr.
Browning, King & Co., Clothing.

Question (a). No.

Question (b). No.

Question (c). No.

4143 J. Adams Brown, 41 W. 34th St., President New
Netherland Bank of N. Y.

Question (a). Syndicate Publishing Co.

Question (b). Syndicate Publishing Co.

Question (c). New York.

C. J. Beard, 41 W. 34th St., Cashier New Neth-
erland Bank of N. Y.

Question (a). G. & C. Merriam.

Question (b). G. & C. Merriam.

Question (c). No.

4144 Miss M. Gadsil, 43 West 34th St., Manager Huy-
ler's Store.

Question (a). No.

Question (b). No.

Question (c). Don't know.

Exhibit: Schedule Produced by Witness Rankin. 1145

P. J. Keelan, 341 5th Ave., Secretary Bureau of Literature.

Question (a). No.

Question (b). No.

Question (c). No.

Gordon Dalrymple, 341 5th Ave., Mgr. Collection Dept. Bureau of Literature.

Question (a). No.

Question (b). No.

Question (c). No.

4146

S. Ryan, 341 5th Ave., Bookkeeper Bureau of Literature.

Question (a). No.

Question (b). No.

Question (c). No.

George A. Coulon, 341 5th Ave., Clerk Bureau of Literature.

4147

Question (a). No.

Question (b). No.

Question (c). No.

E. Vanderhoof, 341 5th Ave., Stenographer Bureau of Literature.

Question (a). No.

Question (b). No.

Question (c). No.

4148

E. Fricke, 341 5th Ave., Stenographer Bureau of Literature.

Question (a). No.

Question (b). No.

Question (c). No.

4043 *Exhibit: Schedule Produced by Witness Hamilton.*

W. Plunkett, 321 3d Ave., Stenographic Bureau of Librarians.

Question (a). No.

Question (b). No.

Question (c). No.

O. Rensch, 311 Ave. & 34th St., Salomon B. Minn & Co.

4050 Question (a). No.

Question (b). No.

Question (c). Yes; New York City.

L. R. Fay, 311 Ave. & 34th St., Salomon B. Minn & Co.

Question (a). No.

Question (b). No.

Question (c). That does to me not relate to New York City.

4051 J. O'Donnell, 311 Ave. & 34th St., Salomon B. Minn & Co.

Question (a). Can't say.

Question (b). No.

Question (c). Cause Webster's testimony was made in New York City.

H. E. C. Co., 321 3d Ave., Managers of C. & O. Company's Store.

4052 Question (a). Don't know.

Question (b). No.

Question (c). That case was presented in New York City.

J. Winton, Brewsters & 34th St., 34th St. Circle Sign, H. B. Ward & Co.

Question (a). No.

Exhibit: Scholar's Preface by William Butler 1119

Question (1): No.

Question (2): No.

E. A. Clegg, President of 1910-11, Manager
1910-1911 (1) (2) May 1911.

Question (3): No.

Question (4): No.

Question (5): No.

J. Shattuck, President of 1911-12, Manager 1120
1911-1912 (1) (2) May 1912.

Question (1): Don't know.

Question (2): I don't know.

Question (3): No.

A. B. Stannard, President of 1912-13, Manager
1912-1913 (1) (2) May 1913.

Question (1): Don't know.

Question (2): No.

Question (3): Don't know.

E. A. Clegg, President of 1913-14, Manager
1913-1914 (1) (2) May 1914.

Question (1): Don't know.

Question (2): No.

Question (3): No.

A. Shattuck, President of 1914-15, Manager 1121
1914-1915 (1) (2) May 1915.

Question (1): I don't know.

Question (2): I don't know.

Question (3): Don't know.

4157 *Exhibit: Schedule Produced by Witness Rankin.*

J. H. Bissell, 1324 Broadway, Manager Douglas Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No.

F. K. Waller, 1354 Broadway, Bookkeeper N. Y. Transfer Co.

4158 Question (a). Merriam used to be; also Lippincott and Funk & Wagnalls.

Question (b). No.

Question (c). No.

A. T. Young, 1360 Broadway, Manager Baltimore Restaurant.

Question (a). No.

Question (b). No.

Question (c). No.

4159

R. T. Parker, 1325 Broadway, Manager Dr. Reed's Cushion Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No.

P. Oldstein, 1341 Broadway, Clerk Kaiser Neckwear Store.

4160

Question (a). Collier for one.

Question (b). No.

Question (c). New York City for one place.

M. Goodman, 230 W. 39th St., Drug Clerk.

Question (a). No.

Question (b). No.

Question (c). No.

Exhibit: Schedule Produced by Witness Rankin. 4161

W. E. Ballard, 7 W. 65th St., Manager Bureau of Literature.

Question (a). No.

Question (b). No.

Question (c). No.

J. L. Johnson, Asst. Mgr. Manhattan Hotel, Madison Ave. & 42nd St.

Question (a). No.

4162

Question (b). No.

Question (c). No.

J. Edward Martin, Asst. Mgr. Manhattan Hotel, Madison Ave. & 42nd St.

Question (a). No.

Question (b). No.

Question (c). No.

W. N. Timpson, Cashier Manhattan Hotel, Madison Ave. & 42nd St.

4163

Question (a). Trow City Directory for one.

Question (b). No.

Question (c). None except New York City.

C. Trevor, 3 East 42nd St., Secretary Morton & Co.

Question (a). No.

4164

Question (b). No.

Question (c). No.

O. W. Sheets, 4 E. 42nd St., Manager Connor Piano Co.

Question (a). Funk & Wagnalls for one.

Question (b). Never thought of it.

Question (c). No.

4165 *Exhibit: Schedule Produced by Witness Rankin.*

H. E. Shaw, 7 E. 42nd St., Paying Teller Branch
Corn Exchange Bank.

Question (a). No.

Question (b). No.

Question (c). No.

E. J. Crowley, 13 E. 42nd St., Manager U. C. S.
Company's Store.

4166 Question (a). No.
 Question (b). No.
 Question (c). No.

T. Elliott, 59 W. 42nd St., Salesman White En-
amel Co.

Question (a). No.

Question (b). No.

Question (c). No.

4167 E. F. Van Voorhies, 501 Fifth Ave., Real Estate
Salesman.

Question (a). No.

Question (b). No.

Question (c). Don't know.

Max Mitchell, 501 Fifth Avenue, Jeweler.

Question (a). No.

Question (b). No.

Question (c). New York, I think.

4168 J. Brown, 501 Fifth Ave., Jewelry Salesman.

Question (a). No.

Question (b). No.

Question (c). Some syndicate; forget
name.

Exhibit: Schedule Produced by Witness Rankin. 4169

H. J. Samuels, 503 Fifth Ave., Manager E. Scheyer & Son's Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No.

J. Johnson, 503 Fifth Ave., Manager Barr & Company's Shoe Store.

Question (a). No.

Question (b). No.

Question (c). No.

4170

George S. Starling, 503 Fifth Ave., Bookkeeper Barr & Company's Shoe Store.

Question (a). There must be a hundred.

Question (b). It depends; if a cheap one, probably made by Frank Lipton, Chicago.

Question (c). New York, Chicago and other places.

4171

J. Riley, 503 Fifth Ave., Manager of Warner Hat Store.

Question (a). G. & C. Merriam for one; there are others.

Question (b). No.

Question (c). Boston, or some place in Massachusetts, for one place.

4172

M. J. Walker, 503 Fifth Ave., Salesman Warner Hat Store.

Question (a). Think there are several.

Question (b). No.

Question (c). New York and other places.

4173 *Exhibit: Schedule Produced by Witness Rankin.*

A. Brock, 503 Fifth Ave., Merchant Tailor.

Question (a). No.

Question (b). No.

Question (c). No.

M. Bauer, 503 Fifth Ave., Manager Weber & Heilbroner.

Question (a). No.

4174

Question (b). No.

Question (c). No.

W. C. Farrell, 503 Fifth Ave., Manager Hat Dept. Weber & Heilbroner.

Question (a). No.

Question (b). No.

Question (c). No.

R. H. Benely, 503 Fifth Ave., Clerk Weber & Heilbroner.

4175

Question (a). American News Co., or
American Book Company
for one.

Question (b). No.

Question (c). Chicago for one place.

J. Fine, 503 Fifth Ave., Clerk Weber & Heilbroner.

4176

Question (a). No.

Question (b). No.

Question (c). No.

L. Brunning, 503 Fifth Avenue, Cashier Weber & Heilbroner.

Question (a). I do not.

Question (b). No.

Question (c). No.

Exhibit: Schedule Produced by Witness Rankin. 4177

William F. Devine, 40 Wall St., Bookkeeper
Strong & Cadwalader.

Question (a). No.

Question (b). No.

Question (c). No.

Wm. H. Eagleson, 40 Wall St., Bookkeeper
Strong & Cadwalader.

Question (a). No.

Question (b). No; anybody can use that
name. 4178

Question (c). No.

John Murney, 40 Wall St., Bookkeeper Strong
& Cadwalader.

Question (a). No.

Question (b). No.

Question (c). Some firm on Fifth Avenue
near 21st St. published an
edition. 4179

Edgar B. Magnus, 40 Wall St., Clerk Strong &
Cadwalader.

Question (a). Merriam of Springfield.

Question (b). Yes, Merriam; I have two
of their dictionaries at my
home.

Question (c). Springfield, Mass.

Q. 14. How many names are there in this sche- 4180
dule? A. One hundred and one as I remember
it, sir.

Q. 15. Will you please give the summary which
you prepared of the answers to the questions
which you asked?

4181

Luther M. Rankin—Direct.

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for the conclusion and summary of the witness. The answers should be allowed to speak for themselves.

4182

A. To question a, ninety-two had no idea as to who were the publisher or publishers of Webster's dictionaries; of the balance who had a particular publisher in mind as associated with the name "Webster" four associated Funk & Wagnalls in their mind with such publication, three associated the Merriams and one each associated the Syndicate Publishing Company, Appleton's, Lippincott, Collier, Trow City Directory Co., American News Company and American Book Company.

4183

To question b, as to whether the name "Webster" as the title of a dictionary indicated the particular publisher, ninety-eight showed by their answers that they assumed that any one might publish the book. Of the other three two answered Merriam, and one answered Syndicate Publishing Company.

4184

To question c, as to the locality of publication, the answers further emphasized the fact that the name "Webster" was not associated in the public mind with a book published in Springfield; for one only, named that locality as the place of publication, while fourteen named New York, two named Philadelphia, and one named Chicago.

Direct examination closed. Oath, Signature and cross examination waived.

DEPOSITION CLOSED.

William F. Donohue—Direct.

4185

WILLIAM F. DONOHUE, a witness called by and on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Please state your name, age, residence and occupation? A. My name is William F. Donohue; my age is 44; my residence is Chicago, Ill., 5619 Sheridan Road; occupation, publisher and book manufacturer.

Q. 2. How many years have you been in the book business? A. Twenty-six.

4186

Q. 3. What is your connection with the business in which you are now occupied? A. I look after the book selling and publishing.

Q. 4. What is the name of that concern? A. M. A. Donohue & Company.

Q. 5. Has your concern ever published dictionaries with the names "Webster" in the title? A. Yes, sir.

4187

Q. 6. Will you give a list of the Webster's dictionaries which you have published as closely as you remember them? A. We have Donohue's Vest Pocket Webster, Donohue's Handy American Webster, Donohue's Reprint of Webster's Unabridged Dictionary.

Q. 7. Did this reprint edition of which you have just spoken have a large sale? A. Very large sale.

Q. 8. Can you give approximately the number of volumes which were sold? A. Over a million.

4188

Q. 9. When did this book have its largest sale? A. Well it had the largest sale about the first five or six years that we reprinted it.

Q. 10. When was that? A. That was in about '94.

Q. 11. Did the full title of this dictionary as given by you, namely, "Donohue's Reprint of

4189

William F. Donohue—Direct.

Webster's Unabridged Dictionary'' appear clearly on the outside of the book? A. Yes.

Q. 12. Did this in any way interfere with the sale of the book?

MR. HALE: Objected to as irrelevant, immaterial and as calling for a guess of the witness.

4190

A. No, it did not interfere.

Q. 13. Did you advertise this reprint edition?

A. Yes.

Q. 14. What methods of advertising did you use? A. Circulars, catalogues, trade papers, also newspapers and magazines.

Q. 15. Can you give any estimate of the amount of money which you spent in advertising this reprint edition? A. I should think about \$100,000.

4191

Q. 16. Have you advertised the other Webster's dictionaries published by you? A. Yes.

Q. 17. Have you advertised them in the same way? A. Practically about the same way.

Q. 18. Can you give any estimate of the amount which this advertising cost you? A. Oh, I think \$15,000 or \$20,000.

4192

Q. 19. Have you kept a fairly close watch on the advertising which has been done by various different publishers of Webster's dictionaries in the last twenty years? A. I have noticed various advertisements.

Q. 20. What proportion of the whole advertising of Webster's dictionary which you have noticed has been that of the G. & C. Merriam Company?

MR. HALE: Objected to as irrelevant and immaterial and as calling for a mere con-

William F. Donohue—Direct.

4193

clusion of the witness upon a matter as to which accurate data has not been presented.

A. Well that would only be a matter of opinion; I don't know. My impression is that about a fifth of all Webster's dictionaries advertised that I have observed were advertised by the G. & C. Merriam Company.

Q. 21. Have you knowledge of the amount of advertising which Laird & Lee have given their book? A. Mr. Lee told me that he had spent as much money as Merriam had advertising the name "Webster's."

4194

MR. HALE: The answer of the witness is objected to as incompetent, being merely hearsay and motion is made to strike it out.

Q. 22. Have you any more particular knowledge about the advertising of any other of the publishers of Webster's dictionary? A. No specific knowledge, but I noticed a large number of publishers advertising Webster's dictionary.

4195

Q. 23. Can you name some of the publishers whose advertisements you have seen bearing on Webster's dictionary? A. Syndicate Publishing Company, G. W. Ogilvie, Thompson & Thomas, Reilly & Britton, Cupples & Leon Company, Marsh & Company, R. S. Peale & Company. Loomis & Company, Saalfeld Publishing Company, and probably others that I don't recall right now.

4196

Q. 24. Over how many years have various ones of these publishers mentioned been advertising A. About twenty years. Brock & Rankin I recall also published it. Jerry O'Donnell is another one.

4197

William F. Donohue—Direct.

Mr. Funk in Michigan also made a school dictionary with the name "Webster" on it.

Q. 25. Do you know about the advertising of Webster's dictionary by the large mail order houses in Chicago? A. They have advertised them.

4198

Q. 26. And do you know the names of those mail order houses? A. Sears, Roebuck & Company, Montgomery Ward & Company, John M. Smyth & Company, Cash Buyers Union, Universal Supply Company, David B. Clarkson Company and Book Supply Company.

Q. 27. Have all of these houses to your knowledge advertised Webster's dictionaries? A. Yes, sir.

4199

Q. 28. Do you know what house published the Webster's dictionaries which they have advertised? A. I don't know all of them; I can mention some of them. Saalfeld Publishing Company, G. W. Ogilvie, they handle a Miles dictionary, called "Miles Vest Pocket Dictionary;" I am not sure whether they put the name "Webster" on their dictionaries or not.

THE WITNESS: Another publisher who has issued Webster's dictionaries was George M. Hill & Company.

4200

Q. 29. Do these mail order houses handle the Merriam dictionaries? A. I have seen their books advertised in catalogues of these houses.

Q. 30. Do they handle more Webster's dictionaries published by the Merriam Company than by other publishers or more by other publishers?

MR. HALE: Objected to as irrelevant and immaterial, as leading, and as calling for something not shown to be within the knowledge of the witness.

William F. Donohue—Direct.

4201

A. I do not know the relative quantities they handle or sell, but I have seen more advertising of Webster books of other publishers than I have of Merriam's in these catalogues.

Q. 31. Can you estimate the proportion of the amount of advertising in these catalogues devoted to Merriam books as compared with those of other publishers?

MR. HALE: Objected to as incompetent and immaterial and because not the best evidence, the catalogues being easily produced if desired. 4202

A. I estimate during the last twenty years about one-fifth of the advertising was Merriam and about four-fifths others. That is the advertising I have seen in those catalogues.

Q. 32. Have you printed catalogues for some of these mail order houses? A. Yes. 4203

Q. 33. Which ones? A. Well, we printed for Sears, Roebuck & Company, John M. Smyth Company, Book Supply Company and have done binding on Ward's, but I don't think we ever did any printing for them.

Q. 34. Your knowledge of the advertising which these mail order houses have devoted to Webster's dictionaries is therefore based largely upon the catalogues which you have printed yourself?

MR. HALE: Objected to as leading and argumentative. 4204

A. Yes, that is correct. I also examine all issues of their catalogues.

DIRECT EXAMINATION CLOSED.

(*William F. Donohue—Cross.*)

4205

CROSS-EXAMINATION by Mr. Hale:

x Q. 35. Are you or your firm at present publishing and selling dictionaries with the name "Webster" in the title? A. Yes, sir.

x Q. 36. How much did you spend in the last twelve months in advertising those dictionaries? A. Probably four or five thousand dollars; all kinds of advertising.

4206

x Q. 37. Is your information sufficient to enable you to answer with certainty that you spent as much as five thousand dollars advertising these dictionaries in the last twelve months. A. Yes.

x Q. 38. What was the nature of the bulk of this advertising? A. Catalogues, circulars, trade papers.

4207

x Q. 39. What are the full titles of the dictionaries you are now selling? A. "Donohue's Vest Pocket Webster," "Donohue's Webster Handy American Dictionary," "Donohue's Reprint Webster's Unabridged Dictionary."

x Q. 40. You said that it did not interfere with your sales to call this book a reprint of Webster's dictionary. Would it have interfered with those sales if you had called it a reprint of the 1847 edition of Webster's dictionary? A. No.

4208

x Q. 41. You have named a number of dictionaries using the name "Webster" other than those of the Merriam Company. Do you know whether or not some of those dictionaries are not identical with each other or substantially so, but published under different titles and handled by different concerns? A. Some may be identical, but many of them are different.

x Q. 42. You are familiar with the fact that plates or duplicate plates of some of these various

(William F. Donohue—Cross.)

4209

dictionaries have been passed from one concern to another and used for the production of dictionaries under the name "Webster"? A. That is, one publisher has sold another publisher plates?

x Q. 43. Yes, and the second publisher has used those plates in the production of what purports to be a new dictionary under a new title? A. I don't know of that fact.

x Q. 44. You never heard of that being done? A. Not to my knowledge; I haven't any actual knowledge of it; I have heard of publishers selling plates. 4210

x Q. 45. Did not you yourself or your house purchase the plates or duplicates of a previously existing dictionary first published without the name "Webster" in the title and then issue substantially the same dictionary matter, calling it "Webster's Dictionary"? A. No, sir.

x Q. 46. Were you or your concern ever identified with a firm doing business under the name of Donohue, Henneberry & Company. A. Yes, sir. 4211

x Q. 47. Did you publish a book entitled "Donohue's Webster's School Dictionary" and "American Pictorial Handy Lexicon of the English Language"? A. I don't recall any such book as that. We had a dictionary called "Popular American Dictionary."

x Q. 48. Do you remember that you or your firm bought a dictionary originally published by a concern doing business under the name of Allison? A. I think we did buy a dictionary from Allison. 4212

x Q. 49. What dictionary did you buy from Allison? A. A little handy dictionary.

x Q. 50. Was it the dictionary entitled "Alli-

(*William F. Donohue—Cross.*)

4213

son's American Pictorial Handy Lexicon"? A. I don't remember what he called it.

x Q. 51. Do you remember changing the title of this book and inserting the name "Webster" in it? A. No.

x Q. 52. You do not deny that you did so, however? A. I don't know that we did; we have always had a book called "Webster's Handy American Dictionary."

4214

x Q. 53. Do you deny inserting the name "Webster" in the title of the dictionary which you bought from Allison?

MR. CARROLL: I object to the form of that question; the witness has already testified that he doesn't remember.

A. Well, we have for years had the Webster's Handy American Dictionary.

4215

MR. HALE: I object to the answer as not responsive and repeat the question. (Question repeated.)

x Q. 54. Do you deny inserting the name "Webster" in the title of the dictionary which you bought from Allison? A. No, I don't deny it, I don't know whether we did or not. We may now run those plates in our Handy American Dictionary, which we have always published and which was published for years.

4216

x Q. 55. You referred to your "Donohue's Vest Pocket Webster's" as one of your publications. Is that the book formerly published by Donohue Henneberry & Company and called "Vest Pocket Webster's Dictionary?" A. No, that is not the same book. That had 320 pages as I recollect it and this present one has 192.

(William F. Donohue—Cross.)

4217

x Q. 56. Any relation between these two Vest Pocket Websters? A. I don't think so.

x Q. 57. Don't you know that this Donohue & Henneberry's Vest Pocket Webster had been previously published under a name of which "Webster" formed no part?

MR. CARROLL: I object to any further questioning on this line as wholly incompetent irrelevant and immaterial.

4218

A. I don't know.

x Q. 58. Where did you get that book? A. The first Vest Pocket we bought from a man named White.

x Q. 59. It was a published book at that time? A. No.

x Q. 60. You bought it in manuscript? A. No we bought plates.

x Q. 61. The initials were J. D. White as you recollect? A. I forget the initials.

4219

x Q. 62. To refresh your recollection I will state to you that the Vest Pocket so-called Webster's dictionary we are speaking of was published by The Glenwood Company under the name of "American Pocket Pronouncing Dictionary" bearing the copyright notice 1893, by J. E. White. Do you deny now having purchased that book and republished it under the name of "Webster?"

4220

MR. CARROLL: I object to the voluntary statement by complainant's counsel of a state of facts which has been in no way proved, and move that this question be stricken out on that ground and as incompetent, irrelevant and immaterial.

(William F. Donohue—Cross.)

4221

A. I deny my having any knowledge that that book was ever published when we bought the plates.

x Q. 63. You have mentioned George W. Ogilvie as a publisher of dictionaries using the name "Webster." Have you ever been associated with him in that business? A. No, sir.

4222

x Q. 64. You have also mentioned the Saalfeld Publishing Company in this connection. You know, do you not, that they took over the Ogilvie publications and are now issuing them? A. Yes, sir.

x Q. 65. Do you know whether or not this Ogilvie or Saalfeld dictionary has not been published under various titles?

MR. CARROLL: Objected to as irrelevant and immaterial.

4223

A. Which one do you refer to, all of their dictionaries?

x Q. 66. Any of them. A. I think they have been published under various titles.

x Q. 67. Can you recall the several titles of the large or unabridged edition once published by Ogilvie?

MR. CARROLL: Objected to as irrelevant and immaterial.

4224

A. I don't recall them.

x Q. 68. Have you ever heard of books bearing the following titles:

"Webster's Imperial Dictionary."

"Webster's Universal Dictionary."

"Webster's Monarch Dictionary."

"Webster's Cosmopolitan Dictionary."

(William F. Donohue—Cross.)

4225

“Clarkson’s Standard American Dictionary?”

MR. CARROLL: Same objection.

A. I have heard of all of those except Cosmopolitan; I don’t recall that.

x Q. 69. And you know, do you not, that they are the same identical dictionary with different titles? A. I don’t know that they are identical, no, I never compared them.

4226

x Q. 70. What is your information on that subject? A. I have no information on that subject.

x Q. 71. As to any of the books named? A. I do not know that they are identical.

x Q. 72. Is your information sufficient to enable you to say that the dictionary proper, that is, the vocabulary part of these books is substantially the same? A. No, I have no information to say that.

x Q. 73. You have mentioned Reilly & Britton. You know, do you not, that they handle Webster’s dictionaries published by the Merriams, do you not? A. I do.

4227

x Q. 74. Why did you use the name “Webster” upon the “Vest Pocket” and “Handy American” Dictionaries which you published?

MR. CARROLL: Same objection.

A. They are based right on the original Webster’s dictionary.

4228

x Q. 75. To your knowledge? A. Well, I have never compared every word. I couldn’t tell to the best of my information and belief.

x Q. 76. Notwithstanding you purchased books previously published under another name?

4229

(William F. Donohue—Cross.)

MR. CARROLL: Same objection. I object to that question on the further ground that there has been no proof of any such facts but merely a statement by counsel for complainant and the testimony of the witness has been to the contrary.

4230

MR. HALE: The witness admitted publishing a dictionary purchased from Allison, and when complainant's time to offer evidence again arrives, any necessary connecting testimony will be offered.

A. Not to my knowledge, we never published any books previously published under another name.

4231

x Q. 77. You have spoken of large sales of your reprint edition of Webster's Dictionary of 1847. Through what channels was that book distributed? A. Newspapers, mail order houses, book stores, general merchants and used largely as premiums and sold through agents.

x Q. 78. At what range of prices was it sold?

MR. CARROLL: Same objection.

A. That is the reprint edition?

x Q. 79. Yes. A. That is they are sold as low as forty cents, cloth binding, to two dollars and one-half, sheep binding.

4232

x Q. 80. Are you connected in a business way in any manner with either the Syndicate Publishing Company or Cupples & Leon Company? A. No, sir.

x Q. 81. You do not handle any of the books that they publish? A. No, sir.

x Q. 82. Aside from the reprints and the large dictionary once published by Mr. Ogilvie, the

William F. Donohue—Re-Direct.

4233

other dictionaries using the name "Webster" are all small or abridged dictionaries; is that correct? A. I think that is correct.

x Q. 83. Have the dictionaries published by your house under the name "Webster" been anywhere officially approved as a standard authority to be used in the schools of any locality? A. You mean for a state adoption or city adoption?

x Q. 84. State or city adoption? A. No.

4234

RE-DIRECT EXAMINATION by Mr. Carroll:

R-D. Q. 85. Have you ever made any effort to have your books adopted for use in the schools of any city or state? A. No.

R-D. Q. 86. Why do you use the name "Donohue" in the title of your dictionary?

MR. HALE: Objected to as irrelevant and immaterial and as not calling for any relevant act, fact or declaration, but merely for the operation of the witness' mind.

4235

A. We use it for the benefit of the advertising and to identify our name with the dictionary.

R-D. Q. 87. You have just answered a question of Mr. Hale's relative to the publication of unabridged Webster's dictionaries, saying that aside from those of Ogilvie and the Merriam Company you thought other Webster's dictionaries were abridged and excepting also reprints. Have you ever heard of the Werner Company and of Webster's Encyclopedic Dictionary, published at Akron, Ohio? A. Yes, I have seen that book.

4236

R-D. Q. 88. Was that abridged or unabridged? A. Unabridged.

4237

(William F. Donohue—*Re-Cross.*)

R-D. Q. 89. How many years ago do you remember first seeing that Dictionary? A. I think about twelve years ago, or fourteen years ago. Auctioneers used to handle that a good deal.

RE-CROSS EXAMINATION by Mr. Hale:

4238 R x Q. 90. This Webster's Encyclopedic Dictionary was one of the reprint editions, was it not? A. I believe it was enlarged.

R x Q. 91. It had Dr. Fallows' Supplement, did it not, added to the 1847 edition? A. I think it did.

R x Q. 92. And except for the supplement it was a reprint edition? A. Yes, but it may have had other matter in it also.

4239 R x Q. 93. You said you used the name "Webster" in your books because they were based upon some other Webster's dictionary. What did you mean by the word "based"? A. The definitions were taken from the Webster's dictionary.

DEPOSITION CLOSED.

Oath and signature of witness waived.

RECESS TO TWO O'CLOCK.

4240

2 P. M.

IT IS HEREBY STIPULATED by and between the counsel for the respective parties that the deposition of Frank E. Wright shall be taken down stenographically by a skillful stenographer appointed by the Special Examiner and subse-

Frank E. Wright—Direct.

4241

quently transcribed and reduced to typewritten form. It is further stipulated that the oath and signature of said Frank E. Wright be and the same are hereby waived.

FRANK E. WRIGHT, a witness called by and on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Bean:

4242

Q. 1. Please state your name, age, residence and occupation? A. My name is Frank E. Wright; my age, 47; residence, 104 West 70th Street, New York City; occupation, publisher.

Q. 2. What position, if any, do you hold in the Syndicate Publishing Company? A. That of president.

Q. 3. How long have you been in the publishing business and what kind of works have you published? A. I have been in the business 4243 twenty-six years; have published dictionaries, encyclopedias, histories, bibles, religious books, juvenile books and various other publications.

Q. 4. How long have you been connected with the Syndicate Publishing Company? A. The Syndicate Publishing Company of Pennsylvania was organized in 1893 by myself. We continued business in Philadelphia until I think the fall of 1908, when the business was moved to New York, 4244 and in the year 1910 the Syndicate Publishing Company of the State of New York was organized for the purpose of taking over the business of the Pennsylvania corporation.

Q. 5. Have you always been president of the present corporation? A. Yes, and the former one, too.

Frank E. Wright—Direct.

4245

Q. 6. Did the Syndicate Publishing Company at some time purchase certain plates of a dictionary from one Klopsch, and if so when, and will you make a general statement regarding such purchase? A. As president of the Syndicate Publishing Company, I think in the month of July, 1908, I purchased from Louis Klopsch, of New York City, the plates, copyright and other property connected with the book called "The Crown

4246

Dictionary of the English language, based upon the unabridged dictionary of Noah Webster." At that time the Syndicate Publishing Company desired to secure the plates of the above mentioned dictionary primarily for use in connection with the plates of an encyclopedia which had also been published by Klopsch and they were uniform in size. It was published by Klopsch and was called the "Crown Encyclopedia" the same as the dictionary, although the plates of the encyclopedia were not purchased from Klopsch.

4247

Q. 7. What, if anything, did the Syndicate Publishing Company do with the plates of this dictionary after their purchase? A. We used the plates of the dictionary in connection with the plates of the encyclopedia making a set of books of eight volumes, under the title "The New Century Reference Library" of which two volumes constituted the dictionary. We also published an edition of the dictionary in one volume under the title "Webster's New Illustrated Dictionary."

4248

Q. 8. Will you state whether or not the dictionary published by you under such title was still described as based upon the unabridged dictionary of Noah Webster?

MR. HALE: Objected to unless the book is produced.

Frank E. Wright—Direct.

4249

A. It was.

Q. 9. Is this book which I show you a copy of the dictionary so published by you in Philadelphia in 1908? A. To the best of my knowledge and belief, it is a copy of the first edition.

(By consent of counsel a copy of the title page is copied into the record, and it is as follows:)

WEBSTER'S
NEW ILLUSTRATED
DICTIONARY

4250

OF THE
ENGLISH LANGUAGE
Based upon the Unabridged Dictionary

OF
NOAH WEBSTER, LL. D.

4251

Revised and brought up to date in accordance with the most recent eminent English and American authorities, and including the following special features:

Origin, Composition and Derivation of the English Language, Principles of Grammar, Simplified Spelling, Synonyms and Antonyms, Foreign Words and Phrases, Weights and Measures, Coins, Language of Flowers and Gems, etc., etc.

4252

Philadelphia.

Syndicate Publishing Company.

1908.

Frank E. Wright—Direct.

4253

Q. 10. Did you afterwards publish the same dictionary with the title changed, and if so, what was the new title? A. "Webster's New Standard Dictionary, Illustrated."

4254

Q. 11. Why was the name or title of the dictionary thus changed for a time? A. When we first published the dictionary under the title "Webster's New Illustrated Dictionary" it was sold principally to the book trade, premium houses, periodicals, and so forth. It was used extensively as a premium with newspapers. We found, when we began advertising this title, extensively, in daily newspapers, that the books in the bookstores and other places militated more or less against the sale by newspapers, causing more or less confusion and trouble. As a result we deemed it advisable to adopt the title "Webster's New Standard Dictionary, Illustrated" for our newspaper business, which was done and continued until we felt that the stock of books in the stores had been practically exhausted, when we began the further use of Webster's New Illustrated Dictionary in conjunction with Webster's New Standard Dictionary, Illustrated.

4255

4256

Q. 12. State, if you please, why after the acquirement of the copyright, you adopted titles for the dictionaries including the name "Webster"? A. Simply and only because the book was based upon the unabridged dictionary of Noah Webster, and therefore that title was more appropriate.

Q. 13. At the time of your first publication of the dictionary with the name "Webster" in the title, were you aware of the fact that the Merriam

Frank E. Wright—Direct.

4257

Company was publishing Webster's dictionaries? A. I was.

Q. 14. Did you shortly after the publication of the dictionary in 1908 receive any communications from the Merriam Company? A. We did.

On or about March 21st, 1909, we received a letter from the Merriam Company.

IT IS HEREBY STIPULATED that the following letters passed between the parties and were received at or about their respective dates;

4258

(Copy)

March 20, 1909.

SYNDICATE PUBLISHING Co.,
234 & 236 South 8th Street,
Philadelphia, Penn.

4259

Gentlemen:

Please send us one copy Webster's New Illustrated Dictionary, Cloth, \$2.00, also one copy of same in leather, red edge, list \$3.00, with bill at best discount, and oblige,

Yours truly,

G. & C. MERRIAM Co.

4260

4261

Frank E. Wright—Direct.

(COPY)

March 22, 1909.

MESSRS. G. & C. MERRIAM COMPANY,
Springfield, Mass.

Gentlemen:

4262

We have your valued favor of the 20th requesting a copy of Webster's New Illustrated Dictionary in cloth, and also one in leather.

We are sending these books to day by prepaid express and while you request bill at best discount, yet we refrain from sending the bill and ask that you accept the volumes with our compliments.

If we can be of any further service to you, or if there is anything about these books about which you wish information, please let us know and we will be glad to furnish same promptly.

4263

Thanking you for your uniform courtesy, we are,

Yours very truly,

SYNDICATE PUBLISHING COMPANY,
F. E. WRIGHT,
President,

(COPY)

March 23, 1909.

4264

SYNDICATE PUBLISHING COMPANY,
12 & 14 West 32nd Street,
New York, N. Y.
MR. F. E. WRIGHT, Pres.,

Dear Sir:

We have the two copies of "Webster's New Illustrated Dictionary" and have examined the

Frank E. Wright—Direct.

4265

same with a good deal of interest. The body of the book looks suspiciously like a book formerly issued by another concern (and which by the way is in one of our suits) but of course we would be wrong in supposing such to be the case. The cuts you have inserted add greatly to the appearance of the book.

We thank you for the two copies sent and are very glad to add them to our collection of dictionaries.

4266

Very truly yours,
G. & C. MERRIAM CO.

(Copy)

March 24, 1909.

MESSRS. G. & C. MERRIAM CO.
Springfield, Mass.

4267

Gentlemen:

We have your letter of the 23rd, acknowledging the two copies of Webster's New Illustrated Dictionary sent you a few days ago.

We note the fact that it seems to you the body of the book looks suspiciously like a book formerly published by another concern and which is in one of your suits. This is a very great surprise to us and we would like to know where we stand.

4268

We purchased the electrotype plates of this book from Louis Klopsch, publisher of the Christian Herald of this city, and whom we understood actually set up the book for his own exclusive use. If there is any suit on with anybody on account of this book we are innocent parties in the matter

Frank E. Wright—Direct.

4269

and would be under a great obligation to you for any information that would tend to show we have been dealt with unfairly.

The book is having a very excellent sale both to the trade and to newspapers who are using it quite largely as a premium.

Trusting we may hear from you again at your convenience we are

4270

Yours very truly,
Syndicate Publishing Co.,
F. E. WRIGHT, President.

Dic, FEW—GH.

(Copy.)

April 2, 1909.

SYNDICATE PUBLISHING Co.,
12 & 14 West 32nd St.,
New York City.

4271

Dear Sirs:

Yours of the 24th ult. was duly received but various causes have prevented an earlier reply.

Of course you know that your so-called Webster's New Illustrated Dictionary has been published under a variety of names, and when we wrote on March 23rd we were under the impression that the book under one of its names was included in one of the suits, but we cannot easily verify this, and we may be mistaken.

4272

We shall doubtless have occasion to write you again about your book, but we shall ask nothing but what is proper and reasonable under the court

Frank E. Wright—Direct.

4273

decisions, and you will, of course, expect to grant no less.

Yours truly,
G. & C. MERRIAM CO.

Q. 15. Did you or not send to the Merriam Company on or about March 22d, 1909, copies of your dictionary as referred to in your letter of that date? A. I did.

4274

Q. 16. Between April 2d, 1909, and October 5th, 1911, did you or the Syndicate Publishing Company, so far as you know, receive any letter or any communication of any kind from the Merriam Company regarding your Webster's New Illustrated Dictionary otherwise entitled "Webster's New Standard Dictionary"? A. Not to my knowledge.

Q. 17. In view of the correspondence which had passed between your company and the Merriam Company and from all the facts within your knowledge, state whether or not during that period you believed or had any idea that the Merriam Company claimed or sought to maintain that in the publication of your dictionary you or your company was in any way infringing upon their rights as publishers of Webster dictionaries? A. No.

4275

Q. 18. To what extent and how during that period was the Syndicate Publishing Company promoting the sale of its dictionary and advertising it and establishing the basis for its distribution? A. By the sale to the bookstores, premium houses, weekly and monthly periodicals and through daily newspapers, and any other channels which seemed to have money enough to buy the goods.

4276

4277

Frank E. Wright—Direct.

Q. 19. About when were plans formulated and carried into effect for the distribution of the dictionary through daily newspapers? A. During the year 1910 extensive plans were made to inaugurate our daily newspaper campaign which began the early part of 1911. Since then until now the campaign has been very active.

4278

Q. 20. When, if ever, after their letter of April 2d, 1909, did the Merriam Company again communicate with you about your dictionary? A. October 4th, 1911, is the date of their letter.

IT IS HEREBY STIPULATED that the following letters passed between the parties and were received at or about their respective dates:

(Copy.)

4279

Seal.	G. & C. MERRIAM COMPANY,
Webster's New	(Established in 1831.)
International Dictionary.	Publishers of
	Genuine Webster's Dic-
	tionaries since 1843.

Just issued.

400,000 words and phrases,
6,000 Illustrations, 2,700 pages.

Springfield, Mass., October 4, 1911.

4280

Received Oct. 5, 1911.

SYNDICATE PUBLISHING COMPANY,
12 West 32nd St.,
New York City.

GENTLEMEN:

Your advertisement and sale of a dictionary entitled "Webster's New Standard Dictionary

Frank E. Wright—Direct.

4281

—Illustrated” has been called to our attention, and we desire to give you formal notice that such advertisement and sale is a plain violation of our rights as the prior and long established publishers of the well known “Webster’s” dictionaries. Your book and advertisements are well calculated to deceive the public and lead them to buy your book in the belief that it is one of our books. This is unfair competition, and we are advised by our counsel that it is actionable. The Courts have so declared, in several cases, and we have other actions pending against other like infringers upon our rights. We shall insist that our rights, as declared by the courts, be respected.

4282

Trusting that you will at once desist from any further violation of our right, and awaiting any explanation you care to make, we remain,

Yours truly,

G. & C. MERRIAM Co.

4283

By O. M. BAKER,
President.

(Copy.)

Oct. 6, 1911.

G. & C. MERRIAM COMPANY,
Springfield, Mass.

4284

GENTLEMEN:

We have your letter of the 4th inst., in which you say:

“Your advertisement and sale of a dictionary entitled ‘Webster’s New Standard Dictionary—Illustrated,’ has been called to our attention, and we desire to give you for-

Frank E. Wright—Direct.

4285

mal notice that such an advertisement and sale is a plain violation of our rights as the prior and long established publishers of the well known 'Webster's' dictionaries. Your book and advertisements are well calculated to deceive the public, and lead them to buy your book in the belief that it is one of our books. This is unfair competition and we are advised by our counsel that it is actionable. The courts have so declared, in several cases, and we have other actions pending against other like infringers upon our rights. We shall insist that our rights, as declared by the courts, be respected.

4286

"Trusting that you will at once desist from any further violation of our rights, and awaiting any explanation you care to make, we remain."

As a preliminary to answering the above letter, we would call your attention to the following:

4287

(a.) Your letter of March 20, 1909, in which you order one copy of each of the cloth and leather Bindings of "Webster's New Illustrated Dictionary";

(b.) Our letter of March 22, 1909, in which we say:

4288

"We are sending these books to-day by prepaid express, and while you request bill at best discount, yet we refrain from sending the bill and ask that you accept the volumes with our compliments.

"If we can be of any further service to you, or if there is anything further about these books about which you wish information, please let us know and we will be glad to furnish same promptly."

Frank E. Wright—Direct.

4289

(c) Your letter of March 23rd, 1909, in which you say:

"We have the two copies of 'Webster's New Illustrated Dictionary,' and have examined the same with a good deal of interest. The body of the book looks suspiciously like a book formerly issued by another concern (and which by the way is one of our suits) but of course we would be wrong in supposing such to be the case. The cuts you have inserted add greatly to the appearance of the book.

4290

"We thank you for the two copies and are very glad to add them to our collection of dictionaries."

(d) Our letter of March 24th, 1909, in which we say:

"We note the fact that it seems to you the body of the book looks suspiciously like a book formerly published by another concern and which is in one of your suits. This is a very great surprise to us and we would like to know where we stand.

4291

"If there is any suit on with anybody on account of this book we would be under a great obligation to you for any information that would tend to show that we have been dealt with unfairly.

4292

"The book is having a very excellent sale both to the trade and to newspapers who are using it quite largely as a premium."

(e) Your letter of April 2, 1909, in which you say:

4293

Frank E. Wright—Direct.

"Of course you know that your so-called 'Webster's New Illustrated' has been published under a variety of names, and when we wrote on March 23rd, we were under the impression that the book under one of its names was included in one of the suits but we cannot easily verify this, and we may be mistaken.

4294

"We shall doubtless have occasion to write you again about your book but we shall ask nothing but what is proper and reasonable under the court decisions, and you will, of course, expect to grant us no less."

4295

Referring to your letter of the 4th inst., would say, that in March, 1909, we were perfecting plans for an original and extensive advertising campaign of our book, and as it is our settled policy to avoid infringing the rights of others, and because we were desirous of avoiding the expenditure of large sums without taking all reasonable precautions against loss which might result by reason of the interposition of obstacles to our enterprise, we wrote you and told you that "we would like to know where we stand." As we received nothing further from you on the subject we inferred (justly, we think) that you did not consider our publication an infringement on any of your rights.

4296

Under these circumstances we should be glad to have you point out to us in what particular respects our advertisement and sale (or the advertisement and sale of the Springfield Union) "is a plain violation of your rights, or that such advertisement and sale is unfair competition."

Frank E. Wright—Direct.

4297

It is needless to say that your reply to above will have our careful and immediate attention.

Yours very truly,
SYNDICATE PUBLISHING COMPANY,
President.

FEW—M

(Copy)

Seal. G. & C. MERRIAM COMPANY,
Webster's New (Established in 1831.)
International Dictionary. Publishers.
Genuine Webster's Dictionaries Since 1843.
Just issued.
400,000 words and phrases.
6,000 illustrations. 2,700 pages.

4298

SPRINGFIELD, MASS., October 17, 1911.

Received

4299

October 18, 1911.

SYNDICATE PUBLISHING Co.,
12 West 32nd Street,
New York, N. Y.

Gentlemen:

When we had the pleasure of an interview with your Mr. Swift, we cited one or two cases in which the principle of unfair competition had been decided by the court. Mr. Swift thought he would like to look those up, or have his lawyers look them up.

4300

As there are a great many cases which bear on this principle, we suggest that you or your attorneys confer with our attorney, Mr. W. B. Hale

4301

Frank E. Wright—Direct.

of Judson & Hale, 40 Wall Street, for any further consideration of this subject which you desire.

Very truly yours,
G. & C. MERRIAM Co.

(COPY)

October 19, 1911.

4302

G. & C. MERRIAM Co.,
Springfield, Mass.

Gentlemen:

We have your letter of the 17th inst., and it has been referred to our attorneys, Messrs. Strong and Cadwalader, 40 Wall Street, New York City, and Mr. George F. Bean, 176 Federal Street, Boston, Mass.

4303

It is the intention to change the title page of our Dictionary so that it will include the following: "This Dictionary is not published by the original publishers of "Webster's Dictionary", or by their successors"; to change the advertisements of it so that they will include: "This dictionary is not published by the original publishers of Webster's Dictionary, or by their successors, but by the well-known Syndicate Publishing Company of New York City"; and in the future, as in the past, to do anything that will, in our opinion, prevent the public from confounding our Dictionary with any dictionary published by you or any other concern.

4304

These changes will be displayed in such a manner as to leave absolutely no ground for any claim that either the book or the advertisements are calculated to deceive the public and lead them to

Frank E. Wright—Direct.

4305

buy our book in the belief that it is one of your books.

Concerning the claim that our Dictionary has no connection with the so-called Webster family, and that it never knew the name of Webster until 1908, would say that the title page of the first edition issued in 1904, printed from type set in the United States, and not from plates made in England, as claimed by you in your conversation with our Mr. Swift, distinctly sets forth the fact that it is "based upon the Unabridged Dictionary of Noah Webster", and in the application for the copyright of that edition, this is fully set forth. No one familiar with the subject would claim that our Dictionary is not based upon the work of Noah Webster.

4306

Yours very truly,

SYNDICATE PUBLISHING COMPANY.

President.

4307

Q. 21. State whether or not shortly after the receipt by you of the Merriam Company's letter of October 4th, 1911, you caused a representative of your company to visit the Merriam Company at Springfield and if so whom and for what purpose? A. I caused Mr. Swift a representative of our company to go to Springfield and see the Merriams shortly after the receipt of their letter of October 4th, 1911, to ascertain in what manner we were violating any of their rights in the publication and sale by advertisement and otherwise of our Webster's New Illustrated Dictionary or Webster's New Standard Dictionary.

4308

Q. 22. In view of the correspondence between the parties, and after Mr. Swift's visit to Spring-

Frank E. Wright—Direct.

4309

field and his report to you of the results of that visit, state whether or not up to the time of the institution of this suit you understood that the Merriam Company claimed that in the publication of your dictionary you were infringing upon their rights? A. Not otherwise than as stated in their letter of October 4th.

4310

Q. 23. State whether or not so far as you know, the Merriam Company, either by letter or otherwise, had notified you or your Company of their purpose to institute suit against your company? A. They did not. The first knowledge we had of any suit was when the suit was entered.

Q. 24. In your letter of October 19th, 1911 to the Merriam Company you said that it was your intention to change the title page of your dictionary so that it would include the following:

4311

“This Dictionary is not published by the original publishers of Webster’s Dictionary, or by their successors.”

and to change all your advertisements of the dictionary so that they would include the same language. Will you state whether or not you in fact did change your title page and advertisements in accordance with what you wrote on that date? A. We did.

4312

Q. 25. Did you or not give any instructions to your advertising manager embodying this change in the advertisements? A. I did, both by letter and verbally.

Q. 26. Did you on October 9th, 1911, cause to be delivered to Mr. Johnson, your advertising manager, a letter signed with your name by your order reading as follows:

Frank E. Wright—Direct.

4313

"Mr. James F. Johnson,
Advertising Department.

Dear Sir:

To overcome any possibility of the public gaining the impression that our dictionary is published by any other than ourselves, or that it is the same as any other book previously published, you will at once place in every announcement or advertisement used by each and every one of the papers handling our dictionary a prominent statement to the effect that our dictionary is not published by the original publishers of Webster's Dictionary or by their successors.

4314

Very truly yours,

SYNDICATE PUBLISHING COMPANY,

(Signed) F. E. Wright,

President,

By A. L. S."

A. Yes.

4315

Q. 27. What if any instructions or actions did you take with reference to the title pages of your dictionary to incorporate the language stated?

A. At that time I gave definite and positive instructions to my manufacturing department as well as to other officers and employees to insert or have inserted new title pages containing the cautionary notice so called on the title page of both Webster's New Illustrated Dictionary and Webster's New Standard Dictionary Illustrated, in all books, bound or in process of manufacture that could be reached by us and also to have the cautionary notice inserted in our display advertisements as we were not desirous of having the public buy our book in the belief that they were getting a book of the Merriam's.

4316

4317

Frank E. Wright—Direct.

Q. 28. Beside putting the cautionary notice upon the title page of your dictionary, what other precaution, if any, did you take to identify the book with your concern as the publisher thereof?

A. And also had the name "Syndicate Publishing Company" stamped in gold on the backbone of the books.

4318

MR. BEAN: I offer as an exhibit a copy of "Webster's New Illustrated Dictionary with the United States Census and Maps" in the form in which said dictionary was being published and distributed at the date of the institution of the suit of the Merriam Company against the Syndicate Publishing Company.

4319

IT IS HEREBY STIPULATED that the exhibit referred to is the dictionary offered in connection with the affidavit of the witness and now on file in the office of the Clerk, marked "Defendant's Webster's New Illustrated Dictionary, with title page as adopted in October, 1911, exhibit with Wright Affidavit."

4320

Q. 29. In the bill of complaint in this suit a statement is made that your company has omitted the 1904 copyright notice from its dictionaries and has substituted a copyright notice for 1911 in place thereof and has placed the date 1911 at the foot of the title page of the dictionary, "For the purpose of concealing the true origin and identity of said dictionary" and leading the public to think that it is a new dictionary first published in the year 1911, and that it is one of the dictionaries published by the complainant in this suit. State, if you please, and if you know, the reason why

Frank E. Wright—Direct.

4321

the 1904 copyright of the dictionary which was issued to Klopsch was omitted from your recent editions of your dictionary? A. First, because I did not regard the copyright on the text matter of the dictionary of any particular or special value; secondly, because Klopsch, before selling the plates to us, had sold a set of plates to another concern, which in turn sold its books to the same class of people as ourselves. Our copyright of 1908 was only intended to cover the title and such new matter, illustrations and so forth as had been added to our edition of the book, but gave us an opportunity of differentiating our edition from that of the other concern, and at or about the same time we took the name of Edward T. Roe off of the title page as editor for the same reasons as above.

4322

Q. 30. State whether or not in the omission of the 1904 copyright notice and the date line on the title page you had any purpose of concealing the origin and identity of your dictionary? A. Absolutely none.

4323

Q. 31. State, if you know, what the practice is among publishers as to the date line on the title page? A. If you mean by date line the imprint on the title page I would say that the practice differs, according to men and books. I think I am within the rule by saying that it is usual to use the following words:

4324

“Published by Syndicate Publishing Company, New York,”

either with or without the year date, according to the pleasure of the publisher.

Q. 32. Have you observed the practice of the Merriam Company in this regard, especially with

Frank E. Wright—Direct.

4325

reference to their dictionary entitled "Webster's Condensed Dictionary" first copyrighted in 1884? A. I have. It appears that on the back of the title page; the Merriam Company carry copyright notices of the year 1884, and the year 1906 and the year 1909, but on the front of the title page they have the year 1911, thereby misleading the public in the belief that it is getting a new dictionary published in 1911, when as a matter of fact the public gets a dictionary originally published twenty-eight years ago with but slight revisions, as is evident by the insertion of an insert containing words and definitions on the subject of aviation and so forth, which are by no means in their proper alphabetical order.

4326

4327

MR. HALE: So much of the answer as follows the words "the year 1911" and beginning with the word "thereby" is objected to and motion is made to strike it out on the following grounds:

First, as not responsive.

Second, as incompetent, irrelevant and immaterial.

Third, as a mere conclusion and opinion of the witness.

MR. BEAN: I offer a copy of said Webster's Condensed Dictionary.

4328

IT IS HEREBY STIPULATED that the dictionary heretofore offered as an exhibit with the affidavit of the witness and marked "Complainant's Webster's Condensed Dictionary Exhibit with Wright Affidavit" now on file in the office of the Clerk of the Court, shall be accepted as the dictionary now offered by the witness.

Frank E. Wright—Cross.

429

Q. 33. When did you begin advertising Webster's New Illustrated Dictionary approximately?

A. As soon as the publication of the book.

Q. 34. What did that advertising consist of?

A. Circular letters, advertising in periodicals and weekly papers.

Q. 35. Will you state approximately when you began your newspaper campaign? A. In the early part of 1911, February.

Q. 36. In what places and as far as you can remember in what newspapers was this campaign carried on? A. Between three and four hundred towns and cities in the United States and Canada.

4330

Q. 37. How were these campaigns usually carried on by the newspapers? A. By the insertion of full pages and fractional pages of display advertising, space called coupons, occupying some two hundred and fifty lines, and reading notices, appearing frequently on first pages as well as in other parts of the paper and occupying from a column down to a hundred lines or thereabouts.

4331

Q. 38. How long did these campaigns last usually in each place? A. From four to six months and occasionally a shorter period.

Q. 39. Can you state what the cost of the advertising thus given to you at the usual rates would have amounted to? A. I can only give an approximate answer, and to the best of my knowledge and belief, the amount would exceed \$500,000 up to and including the contracts now in operation, or about to start.

4332

DIRECT EXAMINATION CLOSED.

CROSS EXAMINATION by Mr. Hale:

x Q. 40. I notice in the copy of your dictionary

Frank E. Wright—Cross.

4333

which you first issued that it contains the date 1908, in the publisher's imprint. I also notice that in the volume issued in the year 1911, the date in the imprint is 1911. Was that change of date made in accordance with any custom prevailing among publishers?

MR. CARROLL: I object to that as having been already answered.

4334

A. The only custom I know of among publishers is that some of them put the year date in the imprint and some do not. It is purely a matter of choice.

x Q. 41. By year date in your last answer, do you mean the date of printing of the particular volume? A. I mean just what I said.

x Q. 42. What do you mean by year date? A. The figures constituting the calendar year appearing occasionally on the bottom of the title page.

4335

x Q. 43. Where the date is used, is it customary to change it each year? A. It is.

x Q. 44. Has there at any time been any business connection between the Syndicate Publishing Company and Cupples & Leon Company who publish this same book under a different title? A. No.

x Q. 45. In your letter dated October 6th, 1911, you say, referring to a letter written by you in March, to the Merriam Company:

4336

"We wrote you and told you that we would like to know where we stand. As we received nothing further from you on the subject, we inferred (justly we think) that you did not consider our publication an infringement of any of your rights."

You were referring here to your letter dated March 24th, 1909, were you not? A. Yes.

Frank E. Wright—Cross.

4337

x Q. 46. You did, however, thereafter receive the letter from the Merriam Company dated April 2nd, 1909, which has been read into the record?

A. I did.

x Q. 47. Your statement above quoted, that you "received nothing further" upon the subject is therefore not strictly accurate? A. I maintain that it is accurate.

x Q. 48. How can that be accurately true since you have just admitted that thereafter you did receive the letter of April 2nd, 1909?

4338

MR. CARROLL: Objected to as calling for an opinion of the witness, as argumentative and on the ground that the correctness or inaccuracy of the letters is best determined by the Court from an inspection of the letters themselves.

A. In my letter of March 24th, 1909, to the Merriam Company I referred specifically to any suit which anybody may bring against us on account of the dictionary, and stated further that we would be under obligation to the Merriam Company if it would give us any information that would tend to show that we had been dealt with unfairly. It does not appear from reading the letter of April 2nd, 1909, that they had any information to give, their only statement being "that they would doubtless have occasion to write us again about our book, when they would ask nothing but that which was proper and reasonable and which we would of course grant."

4339

4340

x Q. 49. You have failed to note the reference to Court decisions contained in that letter, have you not? A. I have not; the letters explain themselves.

x Q. 50. What, if any, answer did you make to

Frank E. Wright—Cross.

4341

the letter of April 2nd, 1909, and prior to the Merriam letter of October 4th, 1911 ? A. None.

x Q. 51. And what communication of any sort in that period did you have with the Merriam Company in regard to that subject matter ? A. None, to my knowledge.

x Q. 52. Did you understand the reference to Court decisions contained in that letter ? A. I understand the meaning of the language.

4342

x Q. 53. What did you understand the reference to Court decisions in that letter to mean ? A. I understood that there had probably been some Court decisions or decision which the Merriam Company considered in their favor and that would bear upon the publication of Webster's dictionary by anybody.

4343

x Q. 54. Did you have any knowledge or information at or prior to that time of any Court decisions in litigations by the Merriam Company involving the name "Webster" as applied to dictionaries ? A. No definite information, but I had understood that there had been a decision—one or more decisions—respecting their right, but I never knew the exact nature of the same.

x Q. 55. Did you know of any court proceedings or decisions in a litigation with one George W. Ogilvie ? A. I knew of the law suit, but did not know the exact results at that time.

4344

x Q. 56. You are referring now to the date of that letter, April 2nd, 1909 ? A. Yes.

x Q. 57. Did you sign the defendant's answer in this case ? A. Yes.

x Q. 58. In that answer, and referring to the suit between the Merriam Company and Ogilvie in the First Circuit, I find the following language :

Frank E. Wright—Cross.

4345

"Defendant, further answering, says that the result of said suit in the First Circuit and the fact of the issuance of said injunction and that it was in force against this complainant was known to the officers of this defendant as well as the fact that since its issuance it has continued and still remains in force, and was in full force and operation at the date of the institution of this suit."

You signed the answer with that statement in it?

4346

MR. CARROLL: I object to these questions on the ground that all this matter has, by order of the Court, been stricken from the answer.

A. Yes.

x Q. 59. And that statement is true? A. It is, and in making this answer I refer to the letter of April 2nd, 1909. At the time this suit was instituted I was fully acquainted with the facts concerning the decisions of the Court referred to.

4347

Adjourned to Monday, May 6th, 1912, at 1:30 o'clock P. M.

NEW YORK, Monday, May 6th, 1912.

1:30 O'Clock P. M.

Met pursuant to adjournment.

4348

Present: The Examiner; William B. Hale, Esq., for complainant; Lauren Carroll, Esq., of counsel for defendant Syndicate Publishing Company and for defendant Cupples & Leon Co.

4349 Adjourned to Friday, May 10th, 1912, at 12 o'clock. At the hearing pursuant to this adjournment the deposition of Albert L. Swift was begun. Said deposition appears at page of this record.

At the close of the hearing on May 10th, 1912, adjournment was taken to Thursday, May 16th, 1912, at 1:30 P. M.

4350

NEW YORK, Thursday, May 16th, 1912.
1:30 O'Clock P. M.

Met pursuant to adjournment.
Present: Counsel as before.

FRANK E. WRIGHT, resumed.

CROSS EXAMINATION by Mr. Hale continued:

4351

x Q. 60. Was it the Syndicate Publishing Company of Pennsylvania or the New York Company that purchased the copyright and plates of the Crown dictionary? A. Pennsylvania.

x Q. 61. Did the Pennsylvania Company begin the publication of that dictionary under the name "Webster?" A. Webster's New Illustrated Dictionary.

4352 x Q. 62. This was done by the Pennsylvania Company, however? A. It was.

x Q. 63. What items of property were thus purchased in connection with this dictionary? A. Electrotype plates, illustrations and copyrights.

x Q. 64. Did you purchase or acquire any sheet stock or bound volumes at that time? A. No.

x Q. 65. Did you publish the book for any length of time under its original name of "Crown Dictionary?" A. No.

Frank E. Wright—Cross.

1353

x Q. 66. In other words, you immediately changed its name? A. Our first edition was published under the title "Webster's New Illustrated Dictionary."

x Q. 67. Aside from the change of name and the adoption of the name "Webster" as part of the title, what other changes did you make in the book or any part of it in your first publication of it? A. The revision which was made in the first edition consisted chiefly of the insertion of what we regarded as new and important words, together with the additions of illustrations, full page, half tone, two colored charts and colored plates. 4354

x Q. 68. About how many of what you term new and important words were inserted in that edition? A. I could not answer the question because I don't know.

x Q. 69. Who does know? A. I do not know. 4355

x Q. 70. Who did the work of adding them? A. I could not tell you; I was not in good health at the time.

x Q. 71. Under whose supervision was it done? A. I really could not tell who actually did that work.

x Q. 72. Such words as were inserted were inserted by making what may be termed plate corrections? A. Yes, sir.

x Q. 73. The illustrations, charts and colored plates which you say were also inserted at that time were made on separate sheets and placed in the book without disturbing the paging of the book; is that correct? A. Without disturbing the text of the pages, the type pages. 4356

x Q. 74. You answer the question yes, then? A. I have answered it.

4357

Frank E. Wright—Cross.

x Q. 75. How long did your company continue to publish the book in that form without further changes? A. I could not say for the reason that it has been customary with us to make additional changes with pretty nearly every edition.

x Q. 76. Changes of what character? A. Insertion of new words.

x Q. 77. In the same manner as the other insertions to which you have testified? A. Yes.

4358

x Q. 78. How many such words have been inserted? A. I cannot tell.

x Q. 79. Who has done this work of insertion? A. It has been done by several people and I really don't know who they were. I know several of them.

x Q. 80. Was it done by any of the regular employees of the Syndicate Publishing Company? A. Yes, I would say that the man who had that in charge was our treasurer.

4359

x Q. 81. His name, please? A. Mr. Delaney.

x Q. 82. Is he still with the company? A. Yes.

x Q. 83. And he had charge of the literary work? A. No, sir, he did not have charge of the literary work; he had charge of the inserting of those words.

x Q. 84. You mean the manufacturing detail of it? A. Yes.

4360

x Q. 85. Who had charge and is responsible for the literary work of making these insertions? A. Professor Charles Morris, of Philadelphia, had to do with it; Charles Leonard Stuart, of New York, had to do with it, and we had something to do with it as the Syndicate Publishing Company. We did not always have one of the other parties do the literary work.

Frank E. Wright—Cross.

4361

x Q. 86. What do you mean by the Syndicate Publishing Company did some of it? A. For instance, I might authorize a certain change or somebody else might authorize a certain change; that would be unimportant and immaterial, however.

x Q. 87. During what period was Mr. Morris' connection with these changes? A. He was our editor for a number of years in Philadelphia.

x Q. 88. When did he cease to act as such? A. When we came to New York.

4362

x Q. 89. When did Mr. Stuart's connection begin and end with this detail? A. I think it was in 1908 through to 1910. I am a little hazy on that because I was not in the office.

x Q. 90. Has anyone else had to do with these literary changes or additions to your book? A. Not to any extent.

x Q. 91. Do you know the address of Mr. Stuart and Mr. Morris; if so, please give it? A. I cannot give you the street address of Mr. Morris. He lives in Philadelphia somewhere on Spring Garden Street, I think. I do not know the home address of Mr. Stuart in New York.

4363

x Q. 92. At any time up to the beginning of this suit, has the Syndicate Publishing Company regularly maintained an editorial department with editors regularly employed? A. Yes, for the past several months Dr. Harry Thurston Peck has been our editor, regularly employed, regularly paid.

4364

x Q. 93. Have the several gentlemen whom you have named had assistants in this work? A. I don't think so; with the exception of Dr. Peck who has had several assistants.

x Q. 94. Was Dr. Peck's editorial work confined to revision subsequent to the beginning of

4365

Frank E. Wright—Cross.

this suit? A. He was with us long before the suit was instituted and is still with us.

x Q. 95. I mean, did Professor Peck make any contributions to any editions published before the institution of this suit? A. I am quite sure he did.

x Q. 96. Do you know what they were? A. No.

4366

x Q. 97. How long did you continue to use the plates purchased from Louis Klopsch for the printing of this book with the corrections as testified to by you? A. Those plates and duplicates thereof were used until our new Websterian dictionary was ready.

x Q. 98. That is to say until after the institution of this suit in November, 1911? A. Yes.

x Q. 99. Whose idea was it to change the title and the title page of the Crown Dictionary to a title including the name "Webster?" A. Mine; as well as other officers of the company.

4367

x Q. 100. I show you a copy of the Crown Dictionary as published by Louis Klopsch and ask you to read into the record the title page thereof as you did in the case of your own first edition of it; the book shown is the book heretofore offered in evidence and marked Complainant's Exhibit A, referred to by H. W. Baker, J. A. Ex'r., February 19th, 1912? A.

When in doubt consult the Crown.

4368

CROWN
DICTIONARY
OF THE
ENGLISH LANGUAGE

Based upon the unabridged dictionary
of Noah Webster, LL. D. revised and

Frank E. Wright—Cross.

4369

brought up to date in accordance with the most recent eminent English and American authorities.

BY

EDWARD T. ROE, LL. B.

With appendix containing synonyms and antonyms, foreign phrases, language of flowers, coins, weights, and measures, differences in time, etc., etc.

4370

THE CHRISTIAN HERALD

LOUIS KLOPSCH, PROPRIETOR.

NEW YORK.

x Q. 101. How much did you pay for the property, copyright and plates acquired from Louis Klopsch in connection with this dictionary?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

4371

A. I decline to answer.

MR. HALE: The Examiner is requested to certify this question to the Court for a ruling as to the propriety of the question, and the duty of the witness to answer it.

x Q. 102. You have testified in your direct examination that your reason for changing the title of the Crown dictionary and adopting a title including the name Webster was: "Simply and only because the book was based upon the unabridged dictionary of Noah Webster, and therefore that title was more appropriate." What book or the edition of what year did you refer to in that ans-

4372

Frank E. Wright—Cross.

4373

wer by the phrase, "The unabridged dictionary of Noah Webster"? A. The 1847 edition.

x Q. 103. Published by G. & C. Merriam Company, the complainants in this case? A. I don't know who published it.

4374

x Q. 104. What did you mean in that answer by the phrase "Based upon the unabridged dictionary of Noah Webster"? A. I meant that our book was made from the unabridged edition of Noah Webster, with the changes and additions which the book itself presents.

4375

x Q. 105. By "made from" do you mean that the 1847 edition of Webster's unabridged dictionary was actually used in the compilation of your dictionary? A. I believe it to have been used by reason of the fact that we purchased the plates of our book and the copyright, and on the title page it plainly stated that the book was based upon the unabridged edition of Webster.

x Q. 106. Yes. But the question goes to what you meant in your testimony above quoted. When you say "made from" did you mean that the 1847 edition of Webster was actually used in the compilation of your books? A. I believe that the 1847 edition was used as a basis.

x Q. 107. What do you mean by the phrase "as a basis"? A. As a ground work.

4376

x Q. 108. Do you mean that any part of the literary matter of the 1847 edition of Webster's dictionary was actually reproduced and carried forward from that book into your book? A. I believe it to have been.

x Q. 109. That is what you mean then by "made from" or "based upon" and other similar terms which you have used? A. It is.

Frank E. Wright—Cross.

4377

x Q. 110. You have stated your belief upon the subject. Have you, however, any actual personal knowledge of how your book was compiled by its original compiler? A. I have not.

x Q. 111. In other words, so far as you are concerned, you leave the books to speak for themselves? A. Yes.

x Q. 112. Upon the title page of this Crown dictionary the name of Edward T. Roe is given as the author. Who is Mr. Roe? A. I don't know.

4378

x Q. 113. Have you ever met him? A. I believe I did meet him years ago.

x Q. 114. What is your latest information as to his whereabouts? A. I really have no information.

x Q. 115. What is the last information you had as to Mr. Roe's whereabouts? A. That he was then in Chicago.

x Q. 116. Have you any information as to his employment then or now? A. Then he was connected with a large dictionary which was being made by Oglivie and Mr. Conkey.

4379

x Q. 117. What was the date of that period to which you refer? A. I think it was in the year 1894 or 1895.

x Q. 118. And you have had no more recent information as to Mr. Roe's whereabouts than that? A. I have no definite information.

x Q. 119. What indefinite information have you then?

4380

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

A. I have heard it said that he was in Chicago, but I have no definite information.

4381

Frank E. Wright—Cross.

x Q. 120. Did you hear that said by any employee or agent of the Syndicate Publishing Company?

MR. CARROLL: Objected to as incompetent, immaterial and irrelevant.

A. No.

4382

x Q. 121. When you changed the name of the Crown dictionary by adopting the name "Webster" did you rely only upon the statement upon the title page of that dictionary, "Based upon the Unabridged Dictionary of Noah Webster"?

A. I did; backed up by the assurance of Dr. Klopsch that such was the case.

4383

x Q. 122. Is the Charles Leonard Stuart referred to in defendant's answer herein, and whose name was placed upon the title page of the defendant's dictionary some time in 1911, the Mr. Stuart that you have referred to just above as the one who made changes? A. He is.

x Q. 123. He was not a co-laborer with Mr. Roe? A. Oh, no.

x Q. 124. Who was first in changing the name of the Crown dictionary to that of Webster's dictionary, you or Cupples & Leon? A. I don't know. I think Cupples & Leon were.

4384

x Q. 125. What was the date of the modification of your title from "Webster's Illustrated" to "Webster's New Standard"? A. I could not tell you offhand.

x Q. 126. Was it prior to 1911? A. No, but in the Spring of 1911.

x Q. 127. Had you determined or planned to adopt and use the name "Webster" in connection with this dictionary at the time you bought the copyrights and plates from Klopsch? A. I certainly did.

Frank E. Wright—Cross.

4385

x Q. 128. You bought the book intending to change its name? A. Yes.

x Q. 129. Was this purchase and the negotiations for it conducted wholly or in part by correspondence? A. No; largely by personal interview.

x Q. 130. Have you any correspondence bearing upon that purchase which can be produced? A. I don't think there was any.

x Q. 131. Did you ever have in your possession the dead copy from which the type was set for this book originally? A. No. 4386

x Q. 132. You never saw it? A. No.

x Q. 133. How much approximately did defendant spend for the editorial additions to its book from the time it was purchased from Klopsch until the beginning of this suit? A. I have not the slightest idea. Expense items of that kind go into the expense column of our books and I have forgotten. 4387

x Q. 134. Have you not a separate account upon your books that will show that sum? A. We have not.

x Q. 135. Was the miscellaneous matter which appears in the concluding part of your dictionary or any of it taken from the Crown Encyclopedia published by Klopsch or your edition of it published under the name of "New Century Reference Library"? A. It may have been, but I don't know of my own knowledge. 4388

x Q. 136. Prior to your purchase and publication of this dictionary, what dictionaries had the Syndicate Publishing Company published? A. The Encyclopedia Dictionary.

x Q. 137. The large four volume dictionary? A. Four volumes.

4389

Frank E. Wright—Cross.

x Q. 138. Any others? A. That same book in different editions under different titles.

x Q. 139. Was that book compiled under the editorial supervision of the Syndicate Publishing Company or was it purchased from some other publisher? A. We purchased it from Cassell & Company of London, England, and gave it a very thorough American revision, under the editorship of Professor Morris of Philadelphia.

4390

x Q. 140. Who prepared the newspaper matter referred to by you in your answer to direct question 37? A. It was done in our advertising department of which Mr. Johnson is the advertising manager under the direct instructions of Mr. Swift and assistants. Many of the newspaper reading notices on the book were prepared by employees of the newspapers themselves.

4391

x Q. 141. I presume it is true that the advertising of this dictionary prior to January 1st, 1911, that is before this newspaper campaign began, was nothing like as extensive as it subsequently was? A. You are right.

x Q. 142. Did you furnish such newspapers with data or other matter as a basis from which they must prepare these reading notices? A. We may have done so, but I don't think so, for the reason that the newspaper notices were largely in the form of news articles.

4392

x Q. 143. Were any of those notices paid for? A. I must decline to answer that.

MR. HALE: The special Examiner is requested to certify this question to the Court for a ruling as to the propriety of the question and the duty of the witness to answer it.

Frank E. Wright—Cross.

4393

x Q. 144. You stated in reply to direct question 39 that the cost of this newspaper advertising at the usual rates would have amounted to a sum in excess of five hundred thousand dollars. How much did that advertising actually and directly cost the defendant in money? A. I must decline to answer.

Mr. HALE: The Examiner is requested to certify this question also for a ruling as to the propriety of the question and the duty of the witness to answer it. 4394

x Q. 145. You do not mean to be understood by your answer to direct question 39 as testifying that the defendant actually paid five hundred thousand dollars for newspaper advertising during the campaign in question? A. I don't care how you understand it.

x Q. 146. How do you mean the Court to understand your answer to direct question 39 in that regard? A. The Court must draw its own conclusion. 4395

x Q. 147. What, if any, consideration did the newspapers receive from defendant for this advertising in addition to a money consideration? A. I decline to answer.

Mr. HALE: The Examiner is requested to certify this question also in connection with the others on this line. 4396

x Q. 148. Have you at all times since you began publishing this book sought to distinguish it from the Webster dictionaries published by the complainant? A. Yes.

x Q. 149. At the beginning what steps did you take to distinguish your book from the Webster

4397

Frank E. Wright—Cross.

dictionary of the complainant? A. By printing our name on the title page in great big bold face letters, which is the usual method adopted by publishers the world over.

x Q. 150. You mean by placing your name in the publisher's imprint upon the title page? A. If you like it that way.

4398

x Q. 151. What other means did you adopt at that time? A. None.

x Q. 152. Of course, omitting the name "Crown" and adding the name "Webster's" had no distinguishing effect?

MR. CARROLL: Objected to as irrelevant and immaterial; objected to on the further ground as improperly stating the facts, inasmuch as the name "Webster" was always in the title of the dictionary.

4399

A. That appears to be the counsel's opinion.

x Q. 153. Did you leave off the words appearing upon the title page of the Crown dictionary "By Edward T. Roe, LL. B.," and insert in lieu thereof, similarly placed, the words "Of Noah Webster, LL. D." upon the title page of your dictionary for the purpose of distinguishing your book from the Webster's dictionaries of the complainant?

4400

MR. CARROLL: Objected to as incorrectly stating the facts; the names were not similarly placed, as an inspection of the dictionaries will show.

MR. HALE: Inspection of the dictionaries will show the correctness of the facts stated in the question, and inspection is earnestly desired.

A. We did not.

x Q. 154. When, if ever, did you restore the name of Roe to the title page? A. During the fall of 1911.

x Q. 155. What was the occasion of restoring Mr. Roe's name to the title page at that time? A. Because there had been some complaint about their being no name of the editor on the title page.

x Q. 156. From what source did such complaint come? A. I believe your people did not like the idea. 4402

x Q. 157. You mean the Merriams? A. The Merriams, yes, and we were desirous of doing everything we could to tell the story of the book.

x Q. 158. If that is true, why do you not include in your warning or explanatory notice a statement that it is the 1847 edition of Webster's dictionary upon which you claim to have founded your book; that is, why do you not specify the date of the edition used? A. We have not felt called upon to do so. 4403

x Q. 159. Is there any commercial reason for not doing so? A. Do I understand your question to mean, have I a good reason for not doing so?

x Q. 160. I mean, what is defendant's reason for not doing so? A. We have not been requested to do so, or instructed to do so.

x Q. 161. Is there any other reason for not doing so? A. There must be many reasons for not wishing to do so. 4404

x Q. 162. Will you state some of the many reasons? A. We state on our title page that we use the unabridged dictionary of Noah Webster as our basis, and I regard it entirely unnecessary to encumber the title page with superfluous statements, which would be were we to add the word suggested.

4405

Frank E. Wright—Cross.

x Q. 163. The word suggested being merely the date, "1847"? A. Yes.

x Q. 164. Is there any commercial or business reason for not using the date? A. I would have many objections to doing it.

4406

x Q. 165. Will you please state some or all of such objections? A. My understanding of that cautionary notice is that its sole object is to distinguish between our books and the books published by Merriam & Company. That object would in no way be helped by adding the "1847" to the cautionary notice. Another reason would be that I prefer to preserve the simplicity of the title page rather than to encumber it with a lot of what seem to me to be senseless statements. I believe that Mr. Hale's obvious reason or obvious hope for having such a notice inserted would be that if inserted it would not distinguish between our books and those of the complainant but would militate against the sale of our dictionaries. As a

4407

matter of fact, I do not think such a condition would follow, because the majority of the buying public very well understand that Webster's unabridged dictionary was the original book published probably forty or fifty or sixty years ago, and the revision of that book with the cautionary notice, "This dictionary is based upon the 1847 edition of Webster's dictionary" and the equally truthful statement that it is not published by the original publishers of Webster's dictionary or by their successors but has been revised and brought up to date by competent English and American authorities would be just the kind of a book the buyers would expect to get. Now, Mr. Hale, I might be willing to insert that cautionary notice providing G. and C. Merriam Company would put

4408

Frank E. Wright—Cross.

4409

the notice on the title page of your "Condensed Dictionary" like this:

"The plates of this dictionary were set up in 1884, and there has been practically no change since that date. Buyers take notice."

and provided further, if you please, that the G. & C. Merriam Company would put on the title page of every "Unabridged Dictionary" of which they had published many editions and sold throughout the world, the notice, "This book is printed from the identical plates of the 1864 edition on which the copyright has expired. Buyers take notice," and below that print the name of the G. & C. Merriam Company as publishers of Springfield, Massachusetts, with the year date of the edition published. 4410

MR. HALE: So much of the witness' answer beginning with the words "I might be willing" and so forth, and continuing to the end is objected to as not responsive, as incompetent, irrelevant and immaterial, and as a volunteered statement of the witness, and motion is made to strike it out. 4411

x Q. 166. Since the beginning of your testimony in this case, that is, since you went upon the stand, have you discussed the form of any answers which you might, could or should make to any line of questions with your counsel? A. No, sir. I have talked it over with all of our officers. 4412

x Q. 167. Have you read and discussed the testimony given by your Mr. Swift? A. I have read it this morning.

x Q. 168. Since beginning to testify have you discussed with your counsel the form of answer

4413

Frank E. Wright—Cross.

to be made to a question calling for what objections there were to the use of the date 1847 in connection with your book? A. As to the form of an answer?

x Q. 169. Yes. A. No, sir.

4414

x Q. 170. Have you discussed anything whatever with reference to a probable question that you might be asked in regard to the use of the date 1847. A. I have discussed a good many features of the case with our counsel.

x Q. 171. And you have discussed this matter since beginning to testify? A. What matter?

x Q. 172. The matter of the use by defendant of the date 1847? A. I have discussed a great many matters with our counsel; I cannot single that out as one of them specifically and specially.

x Q. 173. As a matter of fact, have you not discussed that question with counsel since you went upon the stand and began to testify in this case?

4415 A. I decline to answer.

MR. CARROLL: We are ready to stipulate on the record that as is the usual custom in every law suit the witness has conferred with his counsel at various stages of the examination regarding that examination.

4416

x Q. 174. Have you stated now all the business or commercial reasons which defendant has for being unwilling to use the date 1847 in connection with its warning notice or distinguishing statement? A. There may be other objections to it, but as I am not all of the defendant I would have to take my associates into consideration.

Frank E. Wright—Cross.

4417

x Q. 175. Please state now all the objections that you know of? A. I think I have stated enough.

x Q. 176. You stated in your direct examination that your purpose in leaving off the copyright notice of the Crown dictionary bearing date 1904 and substituting in lieu thereof in your first edition a copyright notice in your own name, giving the date 1908, was to distinguish your printing of this book from the printing of the same book by Cupples & Leon. Is that correct? A. Yes.

4418

x Q. 177. Would there have been any confusion between your book and Cupples & Leon Company's book if you had retained the title "Crown Dictionary" instead of adopting the name "Webster's" as they had done? A. I would presume there would be, but not having gone through that agony I don't know. I do know, however, that there was much confusion between their edition and ours, even after all the precautions that were taken.

4419

x Q. 178. What caused that confusion? A. As a rule it was because they represented that their book was the same as ours.

x Q. 179. In your dictionary as published and sold by you in 1911 through the newspapers—and I am referring to a book offered in evidence marked "Complainant's Exhibit, Richard W. Geldarts' Dictionary"—I notice that you have a single copyright notice in your name bearing date 1911. Why did you leave off all the earlier copyright notices? A. I really don't know.

4420

x Q. 180. I notice also you have the date 1911 in the publisher's imprint upon the title page.

4421

Frank E. Wright—Cross.

Was that date used in accordance with the custom in that regard testified to by you in the earlier part of your examination? A. The custom is to print the year in some cases and in some cases not; sometimes we put it on the title pages and sometimes we do not.

4422

x Q. 181. I show you the book last referred to and ask you if that is a specimen of your most expensive form of dictionary used in the newspaper campaign during 1911? A. I would say so.

x Q. 182. And the only difference between the books of different prices offered in that campaign was in the binding? A. And contents.

x Q. 183. What was the difference in the contents? A. Some had more illustrations than others.

x Q. 184. The only difference in contents was in the matter of illustrations? A. Illustrations.

4423

x Q. 185. Did defendant publish more than one edition in its various bindings during the year 1911 and prior to the beginning of this suit? A. What do you mean by "edition"?

x Q. 186. I mean, did you make any substantial changes in the contents other than the insertion or omission of the illustrations? A. As I have already testified it has been customary to make the insertion of new words as often as it seemed advisable to do so.

4424

x Q. 187. Except for plate corrections, there was no new or revised edition during the year 1911? A. No.

x Q. 188. Is the dictionary shown you, that is, "Complainant's Exhibit Richard W. Geldarts' Dictionary," the dictionary of the style referred to in your advertisements and coupons as the

Frank E. Wright—Cross.

4425

\$2.50 Webster's New Standard Dictionary, the same advertisements referring to the \$2.00 Webster's New Standard and the \$1.50 Webster's New Standard?

MR. CARROLL: Objected to, unless counsel specifies some particular advertisement.

A. I would say it is.

MR. HALE: Counsel was referring to the dictionary coupon published March 29th in the New York American of this city and appearing on page 11 of Complainant's Exhibit Defendant's Advertisements. 4426

x Q. 189. In an advertisement appearing in the Buffalo News of September 28th, 1911, offered in evidence in this case, and appearing on page 44 of Complainant's Exhibit Defendant's Advertisements, I notice a cut of a dictionary in all respects like the Geldart Dictionary shown you and a reference to three styles designated respectively the \$4.00 Webster's New Standard Dictionary and the \$3.00 Webster's New Standard Dictionary and the \$2.00 Webster's New Standard Dictionary. Is this dictionary shown you a specimen of what is here termed the \$4.00 Webster's New Standard Dictionary? 4427

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial. 4428

A. How many illustrations are in it?

x Q. 190. You may look and see? A. I am not going to look at it.

x Q. 191. The book is handed the witness and the witness is requested to say whether that is a specimen of the dictionary referred to as the

Frank E. Wright—Cross.

4429

\$4.00 Webster's New Standard Dictionary? A. When we listed the Webster's New Illustrated Dictionary in cloth at \$1.50, in the half leather at \$2.00 and in full leather at \$2.50 there was only about one-half the illustrations contained in it which appear in the edition which we listed at \$2.00 in cloth, in half at \$3.00 and in full leather at \$4.00. If the dictionary shown me by Mr. Hale has the full number of illustrations it would be the \$4.00 dictionary. If it has the lesser number of illustrations it would be the \$2.50 dictionary.

4430

x Q. 192. The only difference, then, between the \$2.50 and the \$4.00 dictionary as described in the advertisements is in the matter of additional illustrations? A. Of additional illustrations, additional revision and better grade of paper, and what appears to be a better grade of binding.

4431

x Q. 193. During the year 1911 were any copies of defendant's dictionaries ever sold at the retail price of \$4.00? A. I don't know. There were some of them sold at \$3.35.

x Q. 194. Where? A. Ohio.

x Q. 195. By whom; ordinary book stores? A. Our representatives, canvassers.

x Q. 196. Anywhere else? A. Yes; various places.

4432

x Q. 197. Approximately in round numbers show how many dictionaries were sold at the price of \$3.35? A. I could not tell you.

x Q. 198. During the year 1911, were any dictionaries sold at the retail price of \$2.50? A. Yes.

x Q. 196. Where? A. All over. I could not specify any special place.

x Q. 197. You don't mean by the newspapers of course in either instance? A. No.

Frank E. Wright—Cross.

4433

x Q. 198. Do you mean in retail bookstores? A. No, by canvassers. I believe it to be the custom of all the canvassers to sell at the list price.

x Q. 199. And the list price during 1911 for this style, that is, the best grade, was what? A. I have just covered that; in that instance the man sold it for \$3.35, the \$4.00 book. They had a right to sell at whatever price they sold, but as a rule they sold at the list price.

x Q. 200. During the year 1911, were there any bookstores carrying these dictionaries in stock as part of their retail book stock? A. Yes, sir. 4434

x Q. 201. In what cities? A. In very many cities throughout the United States.

x Q. 202. When did you first put an explanatory or warning statement in the coupon advertisement that appeared in the newspapers? A. After the preliminary injunction in this case, after we received the order from the Court. We never up to that time regarded the coupon as an advertisement, but we were informed that it is, so we are willing to take it so. 4435

x Q. 203. Even after the decision of the Court on the preliminary motion, did you insert the explanatory statement in your coupon advertisements until request was made that the same be done by complainant's counsel? A. We did it instantly on receiving notice from the Court, the Court order. So careful were we in that respect that I gave instructions definitely and positively to our advertising department, Mr. Swift and Mr. Adair, and in fact to everybody that had to do with the dictionary in any respect. 4436

x Q. 204. Do you remember that a letter was sent from complainant's counsel calling attention to the fact that the coupon advertisements did not bear the notice? A. I do.

4437

Frank E. Wright—Cross.

x Q. 205. And it was after that that the notice was inserted in the coupon advertisements? A. No, we had ordered it inserted before then. Evidently some of our newspaper customers did not take our instructions.

4438

x Q. 206. Since the beginning of this suit you have had a further revision made of your dictionary under the supervision of Professor Peck to whom you have referred? A. No, that is not so.

x Q. 207. What is the fact in that regard? A. We made an entirely new book.

x Q. 208. Using no part—A. (Interposing.) I don't know whether we used any part of it, but we made an entirely new book from start to finish.

x Q. 209. That new book is the book which you published under the name "The New Websterian?" A. Yes, the 1912 dictionary.

4439

x Q. 210. Did you personally conduct the purchase of the copyright and plates from Klopsch of this dictionary? A. Yes.

x Q. 211. Did anyone else take any part in that transaction? A. No.

x Q. 212. In this newspaper distribution of your dictionary did the papers handle the dictionary on consignment being paid by commission, or otherwise, or what was the plan? A. I decline to answer.

4440

MR. HALE: The Examiner is requested to certify this question for a ruling as to its propriety and the duty of the witness to answer it.

x Q. 213. In reply to direct question No. 36, asking you in what places this newspaper campaign was carried on, you replied: "Between three and four hundred towns and cities in the United

Frank E. Wright—Cross.

4441

States and Canada." Please give a list of the newspapers handling your dictionary and referred to in that answer. A. I decline.

MR. HALE: The Examiner is requested to certify this question as to the propriety of the question and the duty of the witness to answer same.

x Q. 214. Are there written contracts existing between the defendant and various newspapers under which they handle the book? A. Yes.

4442

x Q. 215. Will you produce specimen copies of the types of contract used by you in that connection? A. No.

x Q. 216. You have them in the possession of defendant or copies of the same? A. Yes.

MR. HALE: The defendant is called upon to produce specimen copies of said contracts for the purpose of the cross examination of this witness.

4443

MR. CARROLL: No subpoena *duces tecum* having been served upon defendant, defendant is not prepared to do that.

x Q. 217. Please state the general nature of the scheme or plan as embodied in these contracts. A. I decline.

MR. HALE: Same request to the Examiner to certify the question.

4444

x Q. 218. What provision was made in these contracts for the compensation of the newspapers for the advertising which they gave to defendant's book? A. I decline.

MR. HALE: Same request to the Examiner to certify the question.

4445

Frank E. Wright—Cross.

- x Q. 219. What provision was made in said contract for compensation of the newspapers for handling the book or selling same? A. Declined.

MR. HALE: Same request to certify.

4446

x Q. 220. Is it true as stated in some of the advertisements of your book printed in the New York American that that paper disposed of upwards of one hundred thousand copies of your dictionary? A. I really could not tell how many they sold, but I think they did.

x Q. 221. Please give the names of newspapers or other periodicals which used defendant's dictionary as a premium prior to the newspaper campaign of 1911. A. There were quite a number; I can give some of them from memory. Hampton's Magazine, Metropolitan Magazine, Cosmopolitan Magazine, Christian Work—how many do you want of these?

4447

x Q. 222. I would like a complete list. A. I will give you those and decline to answer further.

x Q. 223. You have a complete list in the office? A. I might find out by looking them up, but I decline to do it.

4448

MR. HALE: The Examiner is requested to certify the request for the names of the periodicals referred to for a ruling as to the propriety of the question and the duty of the witness to answer same.

Complainant's counsel is unable to complete the cross examination of this witness until the questions which the Examiner has been requested to certify to the Court have been ruled upon, and the witness has answered such questions as the Court may rule should be answered. The Examiner is

(*Frank E. Wright—Re-Direct.*)

4449

requested to adjourn the further cross examination of this witness until such questions may be brought before the Court.

RE-DIRECT EXAMINATION by Mr. Carroll:

R-D. Q. 224. When did you learn the exact terms of the Oglvie injunction? A. Shortly after the receipt of the letter from the Merriam Company complaining about our advertisements and book.

4450

R-D. Q. 225. About what was the date? A. Shortly after October 4th, 1911.

R-D. Q. 226. What did you know about the case of Oglvie against the Merriam Company before that date?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. I knew nothing in detail of the thing. I had understood that there had been trouble between Oglvie and the Merriam Company which resulted in a law suit which was won by Oglvie, but after the receipt of this letter from the Merriam Company, written on October 4th, I learned from Mr. Oglvie the nature of the decision.

4451

R-D. Q. 227. In answer to question 27 you stated that you had inserted the cautionary notice prescribed by the decree in the Oglvie case in your advertisements, because you were not desirous of having the public buy your book in the belief that they were getting a book of the Merriams. Did you ever suppose that anyone would buy your book in the belief that they were getting a book of the Merriams?

4452

MR. HALE: Objected to as incompetent, irrelevant and immaterial and not proper re-direct examination.

4453

(Frank E. Wright—Re-Direct.)

A. No one would ever buy our books thinking they were getting Merriam's, providing they had ever seen Merriam's.

4454

R-D. Q. 228. So far as you know, did anyone ever buy your book in the belief that they were getting a book of the Merriam's? A. No, we sold a number of thousand copies of our book in Springfield, Massachusetts, and we took occasion to put in several large advertisements in the papers there in which we specially requested anybody who had purchased our book, thinking it was a Merriam publication to return it and get their money. To the best of my knowledge and belief not a single copy came back.

4455

MR. HALE: The question and the answer thereto is objected to as incompetent, irrelevant and immaterial, and motion is made to strike out the answer. Objection is also made upon the ground that the witness cannot know and has shown no means of knowledge as to whether or not numerous purchasers of these dictionaries have not purchased the same believing they were getting one of the complainant's dictionaries.

4456

R-D. Q. 229. Do you wish to add anything to the testimony you have already given as to your reason for inserting the cautionary notice in your title pages and advertisements? A. Yes.

R-D. Q. 230. What do you wish to add?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. When we learned of the Ogilvie decision and the Court order in which he was requested to

(*Frank E. Wright—Re-Direct.*)

4457

print the so-called cautionary notice on the title page, I immediately saw no reason why that notice should not be put on our title page, providing it would help to distinguish our book from the book published by Merriam, although there was no reason why that notice should be put on our title page, because I understood the Ogilvie decision to apply only to his book, and there were certainly no deceptive statements on the title page of our book, as was in the case, I am told, of the Ogilvie book.

4458

R-D. Q. 231. In cross examination by Mr. Hale, and referring to your answer to question 37, you were asked who prepared the advertising matters by you in the campaigns. In answer to that question you stated that it was done in your advertising department. Was the copy sent out by you always published exactly as prepared by you? A. No; it was very often changed by the newspapers. I wish to add that in my answer as to who prepared the advertising copy I stated that it was done by our advertising department, the manager of which was Mr. Johnson, under the direction of Mr. Swift. I should have added there, and now add for the purpose of correction, that I personally prepared, or rather dictated, a number of the ads to our advertising manager, and really was responsible for them.

4459

R-D. Q. 232. How do you account for the fact, if it be a fact, which has been suggested by counsel for complainant, that some of the advertisements used in your campaigns even after October 9th, 1911, did not contain the so-called cautionary notice?

4460

MR. HALE: Objected to as incompetent, irrelevant and immaterial; the fact only is

4461

(*Frank E. Wright—Re-Direct.*)

relevant and the witness' method of accounting therefor is immaterial.

4462

A. The cautionary notice was sent out to all the newspapers by my orders, and they were requested to insert it in every display ad. I can only account for its not being inserted by reason of their failure to follow our instructions, and the advertisements being their own, they naturally felt that they could do as they pleased.

R-D. Q. 233. Why did you take the name of "Roe" off the title page of your books? A. Because Mr. Klopsch had sold a set of plates of the book to another concern, and in the edition which they published the name of Mr. Roe appeared as the editor. We took the name off because we wanted to divorce our book as far as possible from the edition published by the other concern.

4463

R-D. Q. 234. Do you wish to add anything to your answer to Mr. Hale's question as to what reasons you have for objecting to inserting in your advertisements the cautionary notice of any kind? A. Yes. While I do not object to adding or inserting the cautionary notice on the title page of our book, I do most seriously object to inserting the cautionary notice in our advertisements and in our coupons and in our circulars, for the reason, and solely for the reason, of the expense. We buy advertising space that costs all the way from three cents a line to five dollars, and this cautionary notice occupies about three lines, ordinary newspaper column, and it seems to me unfair that we should be loaded with the expense which has already run into thousands of dollars as a result of being compelled to put that cautionary notice in our advertisements; it is not fair, and there is nothing to be gained by it.

4464

(*Frank E. Wright—Re-Direct.*)

4465

That in itself would represent a very respectable dividend on our capital stock in a year.

MR. CARROLL: That is all.

RE-CROSS EXAMINATION by Mr. Hale:

R-x Q. 235. At the time you dropped the name "Crown Dictionary" and adopted the name "Webster's" did you take legal advice as to your right to do so? A. We did not need to.

4466

R-x Q. 236. What did you mean by that? A. That we thought we knew enough about the legality of the thing.

R-x Q. 237. Did you look up any legal decisions at that time? A. We did not. We knew the word "Webster" was public property.

R-x Q. 238. At least that was your opinion? A. No, it was not my opinion; I knew it.

R-x Q. 239. Without restrictions? A. Yes, without restrictions.

4467

R-x Q. 240. And that is your position to-day? A. No, I have not any position except we have the right to use the word "Webster" in connection with our dictionary.

R-x Q. 241. Do you still insist that you have always been within your legal rights from the beginning in the use of the name "Webster" in connection with this dictionary?

MR. CARROLL: Objected to as irrelevant, incompetent and immaterial.

4468

A. Answer declined.

MR. HALE: The Examiner is requested to certify this question for a ruling of the Court.

4469

Frank E. Wright—Re-Cross.

R-x Q. 242 You have stated in answer to your counsel that there was no reason why a warning notice should be used upon your book. That has always been your opinion, has it not? A. Yes.

R-x Q. 243. Is yet? A. Yes.

R-x Q. 244. Notwithstanding the contrary decision of Judge Coxe upon the motion for preliminary injunction in this case? A. Yes.

4470

R-x Q. 245. You disagree with Judge Coxe then? A. I do. The name of our concern should be sufficient to tell anybody who the publisher is.

R-x Q. 246. And that is your position now, and always has been your position? A. That is my opinion.

R-x Q. 247. And always has been? A. Yes, always will be.

4471

R-x Q. 248. And you are going to act upon that until some Court compels you to do otherwise? A. I shall follow the order of the Court, my dear Mr. Hale.

R-x Q. 249. You have stated that some newspapers have sometimes changed your copy. Will you please specify what newspapers have done so? A. I don't call to mind the names, but I know it has been done in many instances.

4472

R-x Q. 250. Will you please produce copies of the advertisements which have been changed by any newspapers and point out the changes which were made?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, the changes being quite immaterial, the mere fact of the change being all that is relevant.

A. I could very readily do that, but unless advised to do so by counsel, I will decline. And for your

Frank E. Wright—Re-Cross.

4473

information, Mr. Hale, if you will refer to the Boston Herald, who are now advertising the dictionary, and have been for several weeks, there are practically none of their ads which are in any respect the same as the copy sent them by us.

R-x Q. 251. Is there anything in your contract with the Boston Herald with regard to this matter? A. I could not tell without reference to the contract.

R x Q. 252. Will you please refer to the contract and testify to the fact? A. (Witness examines contract.) The contract plainly calls for using our copy and they are changing it without our permission. 4474

R x Q. 253. Will you allow me to see the contract, please, to which you have referred, in making your last answer? A. I will not.

MR. HALE: Defendant's counsel are called upon to produce and allow complainant's counsel to inspect the contract used by the witness in testifying in response to the last question. 4475

MR. CARROLL: Defendant's counsel declines, for the reason that complainants have many times endeavored by hook or by crook to obtain copies of defendant's contracts, and for the particular reason that whether or not these changes have been made in compliance or in violation of the contract is irrelevant and immaterial, no foundation having been laid for this question, and it appearing in no way what the character of these changes was. 4476

MR. HALE: The statement by defendant's counsel that complainant has endeavored by hook or by crook to obtain copies of

4477

Frank E. Wright—Re-Cross.

these contracts is objected to as untrue and offensive and as incompetent, irrelevant and immaterial, and motion is made to strike it out. The Examiner is requested to certify to the Court the question of the duty of the witness and of defendant to afford complainant's counsel an inspection of the contract used by the witness in testifying.

4478

R-x Q. 254. Will you specify what changes were made or the general nature of the changes made by newspapers in your advertising copy? A. The changes that were made were those changes that seemed to satisfy the newspaper publisher.

R-x Q. 255. Is that the best answer you can make? A. The best I can give, because in one case it is one thing and in another it is another.

4479 R-x Q. 256. To what newspapers was notice sent to incorporate in all advertisements the alleged warning or explanatory notice? A. To the best of my knowledge and belief all of the newspapers with which we were doing business.

R-x Q. 257. Will you please name the newspapers to whom such notice was sent? A. I decline.

4480

MR. HALE: The Examiner is requested to certify this question for a ruling as to the propriety of the question and the duty of the witness to answer same.

R-x Q. 258. Will you please produce a copy of the notice sent to the newspapers in this regard? A. I could not produce that, because it was done in our advertising department by letter.

R-x Q. 259. Have you no copy of that letter?

Frank E. Wright—Re-Cross.

4481

A. I presume the advertising department has a copy, but when you are examining Mr. Swift or Mr. Johnson if you do, you can get it through them.

R-x Q. 260. You have referred to a notice sent to newspapers and have purported to state the contents of that notice. The notice is the best evidence of what it contains. Will you please produce one of such notices or a copy of one?

4482

MR. CARROLL: Defendant's counsel states that defendant is not prepared to produce any such notices, no subpoena *duces tecum* having been served.

A. Declined.

MR. HALE: The Examiner is requested to certify this question for a ruling as to the duty of the witness to produce the paper called for.

4483

R-x Q. 261. Will you please state accurately the contents of the letter sent to the newspapers in this regard? A. I did not send it.

R-x Q. 262. Will you please state the contents of the letter that has been sent? A. I cannot state the contents because I did not send the letter, and I have not seen it. I gave instructions that such a letter should be sent.

R-x Q. 263. And you have never seen any of those letters or any copies thereof? A. I may have seen them at the time.

4484

R-x Q. 264. Having seen them, will you please state the contents of them as nearly as you can? A. I would have to get a copy of the letter.

R-x Q. 265. That is easy. Please procure a copy of the letter and testify to its contents?

4485

Frank E. Wright—Re-Cross.

MR. CARROLL: This witness refuses to produce it, not having been ordered to produce it and not being prepared to produce it.

4486

MR. HALE: The question now is not as to the production of the letter, but the witness is asked to testify to the contents of the letter which the defendant has refused to produce.

MR. CARROLL: The witness has answered in answer to that question that he did not send out the letters, and that perhaps he may have seen the letters, but he does not now remember their exact contents.

R-x Q. 266. Will you please answer the question calling for the contents? A. I refuse.

4487

MR. HALE: The Examiner is requested to certify this question to the Court for a ruling as to its propriety and the duty of the witness to answer it.

The Examiner is requested to now adjourn the further cross examination of this witness until a ruling may be obtained upon the questions which he has been requested to certify.

4488

(The examination is accordingly adjourned until tomorrow, Friday, May 17th, 1912, at two P. M.)

Frank E. Wright—Re-Cross.

4489

NEW YORK,
Friday, May 17th, 1912,
2 o'clock P. M.

Met pursuant to adjournment.

Present—Counsel as before.

Adjourned to Thursday, May 23rd, 1912, at 2 P. M.

4490

At the hearing pursuant to this adjournment the deposition of Albert L. Swift was continued. Said continuation of deposition appears at page 1180 of this record.

At the close of the hearing of May 23rd, 1912, adjournment was taken to Friday, May 24th, 1912, at 1 o'clock P. M.

NEW YORK,
Friday, May 24th, 1912,
1 o'clock P. M.

4491

Met pursuant to adjournment.

Present: Counsel as before.

FRANK E. WRIGHT, resumed.

RE-CROSS EXAMINATION Continued by Mr. Hale:

R-x Q. 267. In answer to cross question 75 you stated that it has been customary with defendant to make additional changes with pretty nearly every edition. What do you mean by the term "edition" in that connection? A. Well, the quantity printed at a single time.

4492

Frank E. Wright—Re-Cross.

4493

R-x Q. 268. And the changes referred to in that answer were of what character? A. By the insertion of new words.

R-x Q. 269. By cutting the plates and making place for them? A. Yes, sir.

4494

R-x Q. 270. You have spoken of sales by canvassers. How many canvassers were employed to sell this dictionary? A. I have no means of knowing, for the reason that the newspapers, in carrying out their campaign in very many instances use canvassers in connection with the plan.

R-x Q. 271. Has the defendant company itself under its direct employ any canvassers for its dictionary? A. No.

R-x Q. 272. And has never had? A. No; we are wholesalers, and sell dictionaries to a number of people who in turn sell them by canvassers.

4495

R-x Q. 273. What people or class of people to whom you sell in turn employ canvassers? A. Pretty nearly all of them.

R-x Q. 274. You have stated that you have known of a sale of your dictionary by a canvasser for the price of \$3.35. What work was sold by that canvasser for that price? A. Our regular dictionary, bound in limp leather.

R-x Q. 275. In connection with any other work? A. No.

4496

R-x Q. 276. You have referred to a list price. How and when was any list price fixed by defendant? A. When we issued our circulars or announcements the list price was printed on them.

R-x Q. 277. Will you produce any specimen circular or announcement containing list prices? A. (Witness produces paper.)

Frank E. Wright—Re-Cross.

4497

R-x Q. 278. When was the circular produced first issued by defendant? A. Probably in October, 1911, but I cannot specify the date.

R-x Q. 279. At what prices were your customers authorized to sell your books? A. Any price they pleased.

R-x Q. 280. How about the canvassers? A. The same thing. As a rule, subscription canvassers sell at list price, but very many of them do not.

R-x Q. 281. Has your book been listed at these prices in any other publications except the advertising matter similar to the one produced? A. I don't understand the question. 4498

R-x. Q. 282. For example, has it been so listed in the publishers' trade list annuals? A. We don't sell this book to the book trade.

R-x Q. 283. To whom do you sell it? A. To newspapers and premium houses.

R x Q. 284. Will you name some retailers who carry any edition of this dictionary for retail sale during the year 1911 and prior to the beginning of this suit? A. All of the Riker drug stores, all of the Hegeman drug stores, Siegel, Cooper & Company, the Cox Book Company, O'Neill-Adams, all of this city. Jordan, Marsh, R. H. White, Houghton & Dutton, the American News Company. 4499

R-x Q. 285. The concerns named handle the dictionary published by your house, and you are not referring to the other edition of this same book published by Cupples & Leon in your answer? A. Yes. 4500

R-x Q. 286. Do you mean these concerns handle the book published by the Syndicate Publishing Company? A. I do.

4501

Frank E. Wright—Re-Cross.

R-x Q. 287. And you do not include in that category the edition of it published by Cupples & Leon? A. No. We never recognized that book at all.

4502

R-x Q. 288. I show you a printed circular headed "Description of Webster's New Illustrated Dictionary," and ask you to please identify that as a circular issued by the Syndicate Publishing Company? A. That is one of our circulars.

R-x Q. 289. Was this circular issued some time in the early part of the year 1910? A. I could not tell when it was issued. I would presume that is probably right.

R-x Q. 290. In this circular I find the following language:

4503

"This most convenient and latest of all dictionaries is based on Noah Webster's dictionary, revised and brought up to date by the most recent eminent American and English authorities, designed to meet every demand of a modern and reliable dictionary."

This same circular also contains the following language:

4504

"Its recent publication and careful revision enables it to define and treat a large number of words of recent coinage that cannot be found in any other dictionary no matter how cumbersome and pretentions."

That is the language of some representative of the defendant who prepared this circular, is it not? A. Undoubtedly.

R-x Q. 291. Do the words "revised and brought up to date" contained in this circular refer to

Frank E. Wright—Re-Cross.

4505

work supposed to have been done by Mr. Roe in preparing the Crown dictionary or to revisions and additions made by or under the direction of the Syndicate Publishing Company after it had acquired the plates? A. Both.

R-x Q. 292. I presume you do not know what Mr. Roe did in that connection? A. I do not.

R-x Q. 293. And the changes or additions there referred to which were prepared by the Syndicate Publishing Company are such and such only as you have already referred to; is that correct? A. That is correct. 4506

R-x Q. 294. The date referred to as the point to which the book has been brought up was the date of the issuance of this circular and of the book which it describes; is that correct? A. I would think so.

R-x Q. 295. The same language, to wit, "revised and brought up to date in accordance with the most eminent English and American authorities" appeared also upon the title page of all editions of your book from 1908 to 1911, did it not? A. I would say so. 4507

R-x Q. 296. And it had the same meaning there that it has in this circular; is that correct? A. I would say so.

R-x Q. 297. The only manner in which your book was brought up to date 1911 was by the plate corrections? A. Plate corrections made after we became the owners of the plates. 4508

R-x Q. 298. In making these plate corrections, is it not true that you would saw out and omit in some instances words which had previously been in the dictionary in order to substitute some other

4509

Frank E. Wright—Re-Cross.

word? A. That is the method followed by us, and I presume also by the Merriam Company in correcting their book.

R-x Q. 299. Who are the eminent American and English authorities referred to in that statement? A. The statement was on the title page of the book when we purchased the plates, and I have already testified as to who did the work for us.

4510

R-x Q. 300. You do not know the eminent American and English authorities referred to upon the title page of the Crown dictionary? A. I do not, other than Mr. Roe.

R-x Q. 301. Did the defendant ever advocate or encourage the sale of its dictionary in any way at the price of \$1.00 or thereabouts? A. Yes, at ninety-eight cents.

4511

R-x Q. 302. You are referring now to the newspaper campaign in which the book was sold at that price? A. In which the newspaper sold it at ninety-eight cents.

R-x Q. 303. At any other time, did you advocate the sale of the book as a dollar book? A. We never advocated the sale of the book as a dollar book, but the stores as a rule sold it in that vicinity or at about that figure.

4512

R-x Q. 304. I show you a circular letter upon the letterhead of the Syndicate Publishing Company and ask you if that is a circular letter sent by defendant to the trade at or about March 10th, 1910?

MR. CARROLL: Objected to as irrelevant and immaterial.

A. I would say that came from us.

MR. HALE: Complainant offers in evidence the following portion of the circular letter identified by the witness:

Frank E. Wright—Re-Cross.

4513

"Special Offer: As we employ no traveling salesman, have no commissions, salaries or expenses to pay, we beg to quote the following prices for immediate shipment:

10 lots 75c. per copy.

25 lots 73c. per copy.

50 lots 72c. per copy.

100 lots 70c. per copy.

Terms: 2% ten days—30 days net. f. o. b.
New York City. * * *

4514

At a glance you can readily see that this dictionary will carry a retail price up to \$2.00 per copy, but experience has demonstrated it is the BIGGEST DOLLAR BARGAIN ever shown."

MR. CARROLL: I object to this quotation and move it be stricken from the record unless the paper itself be put in evidence or read in full.

4515

R-x Q. 305. At the argument of this case I propose to question the truth and good faith of the statement that this dictionary has been revised and brought up to the present date in accordance with the most eminent English and American authorities. I therefore desire to give you an opportunity now to indicate fully the nature and extent of the revision to which this book has been at any time subjected and which forms the justification of that statement in your advertisements and upon your books. Will you please give that information now? A. I will offer a copy of the Crown dictionary and a copy of our dictionary, latest edition, and a comparison of the two will show the exact nature of the additions and changes made by us.

4516

4517

Frank E. Wright—Re-Cross.

R-x Q. 306. And that is the only answer you care to make at this time? A. I could not make any other answer.

R-x Q. 307. It is true, is it not, that the Mr. Klopsch, from whom you purchased the copy-rights and plates of this dictionary, is now dead?

MR. CARROLL: Objected to as irrelevant and immaterial.

4518

A. I have been told that Mr. Klopsch is dead. I do not know it of my own knowledge.

R-x Q. 308. Were you told the approximate time of his death? A. I saw it in the newspapers.

R-x Q. 309. About how long ago? A. I should say a couple of years ago or thereabouts.

4519

R-x Q. 310. You stated that you have been told that Mr. Roe, who has been given as the author, editor or compiler of this Crown dictionary, was located in Chicago? A. Yes.

R-x Q. 311. Who told you that? A. I knew it; that he used to live there.

R-x Q. 312. Who told you that, the latest time you heard of it? A. I don't remember. I think it was Mr. Ogilvie.

R-x Q. 313. And how late was that? A. Since this trouble came up with you.

4520

R-x Q. 314. Did he give you an address at which Mr. Roe might be found? A. No.

R-x Q. 315. Have any of your counsel mentioned where he could be found to you? A. No, sir.

R-x Q. 316. Have any of the counsel for Cupples & Leon Company mentioned it? A. No, sir.

R-x Q. 317. Has any member connected with

Frank E. Wright—Re-Cross.

4521

the concern of Cupples & Leon Company mentioned it to you or anyone connected with the Syndicate Publishing Company, to your knowledge? A. No, sir.

R-x Q. 318. Or according to your best information and belief? A. No.

R x Q. 319. Is there any person besides Mr. Roe who could testify with knowledge as to what book this dictionary in litigation was in fact based upon? A. Yes. 4522

R x Q. 320. Who? A. Dr. Harry Thurston Peck of this city.

R x Q. 321. In what way is he in a position to give such testimony? A. You will have to ask him.

R x Q. 322. Is there any other person that you know of that you can name that could afford such information? A. I don't think there is.

R x Q. 323. And have you, or according to your best information and belief has any person representing either the Syndicate Publishing Company or Cupples & Leon Company been in communication with Mr. Roe since this suit was commenced? A. I would not know. I have not taken an active part in this suit. 4523

R x Q. 324. Have you any information upon that subject whatsoever? A. They have tried to locate Mr. Roe; whether or not they have actually succeeded I don't know. 4524

R-x Q. 325. What is your best information and belief upon that subject? A. Haven't I answered the question?

MR. CARROLL: I object to it, the question having already been answered.

4525 (Frank E. Wright—*Re-re-Direct.*)

R-x Q. 326. What is your information and belief upon that question? A. I have not any information and belief.

R-x Q. 327. I presume you are a stockholder of the Syndicate Publishing Company as well as its president and a director? A. I am.

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

4526 R-x Q. 328. Is your stock holding sufficient to give you control of the company?

MR. CARROLL: Objected to as irrelevant and immaterial.

A. I decline to answer the question.

R-x Q. 329. Do you decline to answer? A. I certainly do.

MR. HALE: That is all.

4527 RE-RE-DIRECT EXAMINATION BY MR. CARROLL.

MR. CARROLL: I offer in evidence the two papers identified by Mr. Wright at the request of Mr. Hale, and I read from the letter of the Syndicate Publishing Company, the following:

4528 "This letter is being sent to NEW TRADE ONLY for the purpose of extending our business among dealers who have not yet seen this book, and the following is a VERY SPECIAL PROPOSITION made with a view of opening new accounts immediately."

(Papers referred to marked Defendant's Exhibits A and B, May 24th, 1912, J. A. S., Ex'r.)

(*Frank E. Wright—Re-re-Direct.*)

4529

By MR. CARROLL:

R-R-D. Q. 330. I call your attention to the two papers just put in evidence and particularly to the two stamps thereon, "Received March 14th, 1910," also to the glue which has been pulled off the side of Exhibit B, and part of the paper pulled off the side of exhibit A, also the pin marks therein, and ask you if you can state from your own knowledge in addition to these indications whether or not the two circulars were sent out together by the Syndicate Publishing Company? A. I cannot. My belief is that the exhibit A was not included with the letter bearing date March 10th.

4530

R-R-D Q. 331. What is your belief as to the issuance of the circular, Defendant's Exhibit A?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, the witness can only testify to his knowledge.

4531

A. It was not our custom to send that circular with such a letter as that to the trade. It may have been included; I don't know.

MR. HALE: Complainant's counsel states that the pin hole is probably made by a pin inserted by him pinning the printed circular to the typewritten circular letter. The paste or glue marks referred to are due to the fact that complainant's counsel had the same pasted in a scrap book for preservation.

4532

R-R-D Q. 332. For what purpose was this circular, Defendant's Exhibit A, prepared by the Syndicate Publishing Company? A. For the benefit of our canvassers who were selling the dictionary.

(*Frank E. Wright—Re-re-Direct.*)

4533

R-R-D Q. 333. How was it used by them? A. Given to them to study so they could be posted as to what the dictionary was.

R-R-D Q. 334. Were those canvassers supposed to distribute these circulars? A. No.

R-R-D Q. 335. Were they given to them simply for their own information and use? A. For their own information.

4534

R-R-D. Q. 336. Were these circulars prepared by the Syndicate Publishing Company of New York or by the Syndicate Publishing Company of Philadelphia? A. The circular was printed at a time not far from the taking over of the Pennsylvania corporation by the New York corporation, so that I cannot tell definitely whether it was printed by the New York Corporation or by the Pennsylvania. I might be able to get that information by going over our records if it is important.

4535

R-R-D. Q. 337. In answer to question 245 in cross examination you stated, "The name of our concern should be sufficient to tell anybody who the publisher is." In answer to question 248, which referred to that statement, and in which you were asked, "Are you going to act upon that until some court compels you to do otherwise," you answered, "I shall follow the order of the Court, my dear Mr. Hale." Do you wish to

4536

change your answer to that question or add anything to it? A. I am perfectly willing to insert the cautionary notice on the title page of our book, because I do not wish that there should be any question of doubt in the Merriam people's minds as to our being entirely fair, and honestly strive to differentiate our book from theirs, as

(*Frank E. Wright—Re-re-Direct.*)

4537

much as possible. We thought we were showing this spirit, when on October 9th, we gave instructions to have that cautionary notice put on the title page of our books before any suit was entered or before there was any trouble.

R-R-D. Q. 338. In answer to question 39, in which you were asked, "Can you state the cost of the advertising thus given to you at the usual rates" you answered, "I can only give an approximate answer, and to the best of my knowledge and belief, the amount would exceed five hundred thousand dollars up to and including the contracts now in operation or about to start." Do you wish to add anything to that statement or to correct it in any way? A. Yes. I have since had the advertising measured up, and at the current rates of the newspapers I find that if the space had been paid for the total amount would exceed two and one-half million dollars.

4538

4539

MR. HALE: The answer is objected to upon the ground that it appears from the answer that such sum was not in fact paid and therefore the matter is wholly irrelevant, incompetent and immaterial.

MR. CARROLL: It is entirely relevant and material on the question of the secondary meaning of the word "Webster" in the title of dictionaries whether or not other publishers or dealers than the complainant have advertised the name "Webster" in the title of dictionaries little or very widely. Whether or not this advertising was given to the name "Webster" by the defendant or by other publishers of Webster's dictionaries or by depart-

4540

(*Frank E. Wright—Re-re-Direct.*)

4541

ment stores or by newspapers is of no consequence in determining the relevancy of this question.

MR. HALE: Upon such a question the advertisements which are one of the means of committing the fraud complained of, cannot be considered.

R-R-D. Q. 339. Had you finished your answer?

4542 A. I had not. The combined circulation of the newspapers which advertised the dictionary was in excess of six million copies.

R-R-D. Q. 340. Are you correct in that statement? A. I am informed that the combined circulation of the newspapers which advertised the dictionary was in excess of six million copies.

4543

MR. HALE: The answer is objected to as being frankly hearsay, and therefore incompetent, irrelevant and immaterial, and motion is made to strike it out. It is also objected to upon the ground that evidence showing the magnitude of defendant's wrong constitutes no defense.

4544

R-R-D. Q. 341. You have stated to me from figures which you have had computed by your people, the combined circulation of the newspapers amounted to six hundred million. Was that statement correct, and do you therefore wish to correct your statement?

MR. HALE: Objected to as leading, and as incompetent, irrelevant and immaterial, because, not calling for the knowledge of the witness, but only for hearsay, and up-

(*Frank E. Wright—Re-re-Cross.*)

4545

on a matter which cannot be tested by cross examination.

A. I was in error in stating six million, when I should have said six hundred million, and in each one of these newspapers appeared the newspaper announcement of the dictionary.

MR. CARROLL: It was testified to by Mr. Washburn that since 1864 sixty-eight million circulars had been distributed by the G. & C. Merriam Company for the purpose of advertising their dictionaries. This testimony is offered to show that if each newspaper distributed be considered as one circular, there has been given to the books of the defendant since January 1st, 1911, advertising growing out of six hundred million circulars.

4546

MR. HALE: Complainants object to the introduction of argument into the record in the manner of the above statement.

4547

MR. CARROLL: The statement is not made for argument, but simply to show the relevancy of the question. That is all.

RE-RE-CROSS EXAMINATION by Mr. Hale:

R-R-x Q. 342. You have stated that the advertising used by defendant at current rates would have amounted to the very large sum mentioned. You did not pay that very large sum? A. I did not state as you say.

4548

R-R-x Q. 343. Did you pay for any portion of this advertising by means of the dictionary itself in lieu of cash? A. No, we sold the dictionaries to the newspapers.

(*Frank E. Wright—Re-re-Cross.*)

4549

R-R-x Q. 344. Did they receive a credit for the advertising which they gave the dictionaries and in that manner pay for the dictionaries which you say you sold them? A. No, they paid for them in cash.

R-R-x Q. 345. How was such part of the advertising as was not paid for in cash paid for by the defendant? A. By our plan.

4550

R-R-x Q. 346. Please answer the question. How was it paid for; that is the only part of the plan I want? A. Repeat the question?

R R x Q. 347. (Question read) How was such part of the advertising as was not paid for in cash paid for by the defendant?

A. It was not paid for by the defendant; it was the newspaper's advertising and not the defendant's. The advertising we paid for in cash was ours.

4551

R R x Q. 348. Have you read your testimony since you were last upon the stand? A. I have not.

R R x Q. 349. Have you gone over any portion of it with your counsel? A. No. I talked with our counsel, but I have not gone over it.

R R x Q. 350. You have talked with your counsel about the testimony which you have given?

A. Yes, I conferred with him.

4552

R R x Q. 351. Did you also talk with him about the testimony which you should give in answer to certain lines of inquiry?

MR. CARROLL: Again I stipulate on the record as I did before in the same terms that at various times through the conduct of the case this witness has conferred with his counsel about the presentation of the testimony.

(*Frank E. Wright—Re-re-Cross.*)

4553

MR. HALE: Complainant has always deemed it an impropriety for counsel to discuss with the witness after he has taken the stand and before the completion of his testimony either the testimony which he has given or the testimony which he is yet to give in the course of the examination being conducted, and the reasons for that opinion are obvious.

4554

CROSS-EXAMINATION CLOSED.

MR. CARROLL: During the intervals when a witness is off the stand, counsel for the defendant can see no impropriety in discussing the case with him.

DEPOSITION CLOSED.

Further hearing adjourned to Wednesday, May 29th, 1912, at 2 P. M., at the office of Lauren Carroll, Esq., No. 2 Wall Street, New York City.

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4557

(*Albert L. Swift—Direct.*)

NEW YORK, Friday, May 10th, 1912.

Met pursuant to adjournment noted on page 1088 of this record.

Present: Counsel as before.

4558

It is hereby stipulated between the counsel for the respective parties that the deposition of Albert L. Swift shall be taken down stenographically by a skillful stenographer appointed by the Special Examiner and subsequently transcribed and reduced to typewritten form. It is further stipulated that the oath and signature of said Albert L. Swift be and the same are hereby waived.

ALBERT L. SWIFT, a witness called by and on behalf of the defendants, testified as follows:

4559

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Will you state your full name, age, residence and occupation? A. Albert L. Swift; fifty years old; residence, 351 West 56th Street, New York; I am vice-president of the Syndicate Publishing Company.

Q. 2. How long have you been connected with the Syndicate Publishing Company? A. Since the first of January, 1911.

4560

Q. 3. Have you occupied the same position during all that time? A. No.

Q. 4. What position did you occupy during part of that time? A. I did not hold any office until last fall I was elected chairman of the Executive Committee, which position I held until about two weeks ago, and some time since the first of this year I was elected first vice-president.

(*Albert L. Swift—Direct.*)

4561

Q. 5. How long have you been in the book business? A. I never handled books until my connection here with the Syndicate; my business had always been with newspapers, with other styles of printing,—never books.

Q. 6. What business were you in before you came with the Syndicate Publishing Company for some years? A. For the last fifteen or twenty years I had been in the business of supplying premium articles and premium plans to newspapers all over the country along lines of stimulating their circulation or their business office receipts, and I consolidated with this company on January 1st, 1911. 4562

Q. 7. On or about the 15th of October, 1911, did you go to Springfield, Massachusetts? A. Yes, sir.

Q. 8. Will you state what was the reason for that trip? 4563

MR. HALE: Objected to as irrelevant, immaterial and incompetent.

A. Our concern had written a letter to the G. & C. Merriam Company several days before, and they had not replied to it. I went up to endeavor to get an answer to the letter—or rather the points contained in the letter.

Q. 9. What was the occasion which prompted your concern to write that letter to the G. & C. Merriam Company? A. A letter from them to us. 4564

Q. 10. Are these letters which you referred to the same as those which have already been incorporated in the testimony of Mr. Wright, dated respectively, October 4th, 1911, a letter from the G. & C. Merriam Company addressed to the Syndicate Publishing Company, and a letter dated Oc-

4565

(Albert L. Swift—Direct.)

tober 6th, 1911, from the Syndicate Publishing Company addressed to the G. & C. Merriam Company? A. That is it.

Q. 11. When you arrived in Springfield on or about the 15th of October, 1911, where did you go?

A. I went to the offices of the G. & C. Merriam Company.

4566

Q. 12. Who did you see there? A. The first man I asked for was the president of the company, Mr. O. M. Baker.

Q. 13. Did you see Mr. Baker? A. Yes.

Q. 14. What did you say and what did he say as near as you can remember?

MR. HALE: Objected to as incompetent, irrelevant and immaterial. Complainant's counsel inquires the purpose of this line of examination, and what it is expected to prove by it.

4567

MR. CARROLL: Defendants' counsel answers that the purpose of the proof is obvious.

4568

A. I told Mr. Baker who I was and my connection with the Syndicate Publishing Company and explained to him that we had written him a letter several days before in reply to the one received by him, and we had not had a reply to it. I told him that we had talked it over here and decided that I would just go up and go over the matter with him verbally and ask him to outline specifically and definitely what he claimed we should do and why he claimed it. That was in substance what occurred.

Q. 15. Did you make any statement to Mr. Baker about your desire or intention to infringe any of their rights?

(*Albert L. Swift—Direct.*)

4569

MR. HALE: Objected to as incompetent, immaterial, irrelevant, and as calling for self-serving declarations.

A. I disclaimed any intention on our part and told them we would be very glad to adopt any measures to prevent any conflict of opinion on that point if he would outline definitely and specifically what would reach that end.

Q. 16. What did he say then?

4570

MR. HALE: This question and this line of examination is objected to as incompetent, irrelevant, immaterial, and as not within any issues presented by the pleadings, and it is thereupon stipulated that this objection shall apply to all subsequent questions along this line without being specifically repeated to each one.

MR. CARROLL: The purpose of this line of testimony is to show that about a month before this suit was started the defendant, Syndicate Publishing Company, went frankly to the officers of the G. & C. Merriam Company, stated that it had never supposed that it was infringing the rights of the G. & C. Merriam Company in any way, and offered to meet the demands of the G. & C. Merriam Company in every way possible so long as it should not be required that any of its legal rights be given up. The testimony will show that the president of the G. & C. Merriam Company made practically no request for changes in the books published by the defendants, except that the name "Webster" be once and for all abandoned, and the testimony will fur-

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(Albert L. Swift—Direct.)

ther show that there was no suggestion of any suit being brought.

MR. HALE: Complainant responds that defendants had already been notified that the matter was in the hands of complainant's attorneys.

4574

A. Mr. Baker said, "Quit using the word 'Webster'." I said, "Why?" Mr. Baker answered that he would give me an answer to my query by propounding another one, and he said, "Why did you use the word 'Webster'?" I did not have an opportunity of replying then.

4575

Q. 17. What then took place? A. Mr. Baker said, "Excuse me a moment." And he went into the office, the door of which we were standing against, and in a very short time he came out and invited me in and introduced me to Mr. Washburn, who was seated there, and told each of us who the other was. Then Mr. Baker took up the conversation by stating to Mr. Washburn in my presence that he had just asked Mr. Swift why we used the word "Webster," and continued by saying, "And Mr. Swift, if he were frank, would say that they used the word 'Webster' because they felt that we had built up a valuable trade right in that name, which they wanted to turn to their own account, or words to that substance. I am not attempting to give the verbatim conversation. And he wound up his statement by saying, "Isn't that so, Mr. Swift?"

4576

Q. 18. What did you answer. A. I said, "No, sir, it is not so."

Q. 19. Did you give a reason for your use of the name "Webster"? A. I said, "If you will permit me to answer the question propounded to me,

(*Albert L. Swift—Direct.*)

4577

we used the word 'Webster' because our book is founded on Webster, and because we have understood that we are entirely within our rights in using it, and if we are not, I want you to tell me why we are not."

Q. 20. Did you have any notice at or before the time when you went to the offices of the G. & C. Merriam Company in Springfield, Massachusetts, on or about the 15th of October, that the matter of the dictionary published by the Syndicate Publishing Company had been or was expected to be placed in the hands of the counsel of the G. & C. Merriam Company? A. No, sir. The only letter that I recall as having received was the letter of October 4th, which stands for itself.

4578

Q. 21. In folio 153 of the affidavit of Kirk N. Washburn, which was filed on behalf of the complainant in support of its motion for a preliminary injunction in this case, and which affidavit has by stipulation been admitted into the record of the case, Mr. Washburn states in substance that one circumstance which points to the fact alleged by him that defendant picked out the name "Webster" for the purpose of appropriating the reputation which complainant had given to that name is the circumstance that none of the competitors of the G. & C. Merriam Company have seen fit to use the name "Worcester" in connection with their dictionaries. Will you state why you did not use the name "Worcester" in connection with your dictionary? A. I presume it was probably for the same reason that the Merriam people do not use the word "Worcester" in connection with their dictionary.

4579

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Q. 22. What reason is that? A. On the presumption that Webster had made a better dictionary than Worcester.

4581

(Albert L. Swift—Direct.)

Q. 23. Do you suppose the Merriams have any other reason for calling their book "Webster" than that?

MR. HALE: Objected to as irrelevant and immaterial and calling for a surmise of the witness.

MR. CARROLL: Question withdrawn.

4582

Q. 24. Have you any other reason for calling your book "Webster" instead of "Worcester" than that which you have given, namely, that Webster's was a better book? A. Yes.

Q. 25. What reason is that? A. The book as we purchased it clearly stated on its certificate of copyright that was transferred to us when we purchased the same, it clearly stated that it was founded or based upon Webster.

4583

MR. CARROLL: The certificate of copyright has been offered in evidence, and accepted in evidence by the complainants in this case in connection with the affidavit of Kirk N. Washburn, and for more exact information as to its contents reference is hereby made to said certificate.

4584

Q. 26. At folio 151 of the affidavit of Kirk N. Washburn referred to in the last question it is stated that the book sold by the Syndicate Publishing Company was formerly published by the Christian Herald under the name "Crown Dictionary", that the sales of this dictionary under that name were inconsiderable, but that as soon as the name was changed from "Crown Dictionary" to "Webster's New Standard Dictionary" the sales became enormous. Mr. Washburn draws the inference from this that the whole reason for

(Albert L. Swift—Direct.)

4585

these sales was the appropriation by the Syndicate Publishing Company of the name "Webster." Will you kindly state whether the sales of the Syndicate Publishing Company's book immediately became enormous as alleged upon the change of the name from "Crown Dictionary" to "Webster's New Standard Dictionary"? A. No. They fell off very materially. The Christian Herald people told me that they put out over fifty thousand of them.

4586

MR. HALE: I object to the statement of what the witness was told as being pure hearsay and move that it be stricken out.

Q. 27. Go ahead and finish your answer? A. The Syndicate Publishing Company began to print the book in 1908 as "Webster's New Illustrated Dictionary" changing the name to conform to its title page, and the sale from that time until the first of January, 1911, was very immaterial. Then in 1911, when I put on this newspaper distribution plan, which I originated, with its immense amount of advertising, the sales became very much larger.

4587

Q. 28. When you went to Springfield on or about October 15th, 1911, did you tell Mr. Baker that a change had been ordered in the title pages of your books? A. Yes, sir. I told him that it had.

4588

Q. 29. What did you state to him with regard to this change, not with regard to your reason for making the change, which has already been covered, but with regard to the machinery of the change itself? A. I told him that we had actually ordered placed on the title pages, the notice to the effect that "These dictionaries are not pub-

4589

(Albert L. Swift—Direct.)

lished by the original publishers of Webster's Dictionary or by their successors." He told me that that was not all that was necessary in our change.

Q. 30. Did you state to Mr. Baker that the changes which you had made were to be permanent? A. Yes, sir.

4590

Q. 31. Did you state to him that you had placed the name of the Syndicate Publishing Company on the back bone of the book? A. Yes, sir.

Q. 32. At any time during the conversation with either Mr. Baker or Mr. Washburn, did either of them intimate that their company intended to bring suit against your company?

MR. HALE: Objected to as irrelevant, immaterial, no rule of law requiring notice of intended suit.

4591

A. No, they did not say that they intended to.

Q. 33. On or about October 9th, 1911, did you communicate with the various newspapers which were running the advertisement of your dictionary concerning the sale of said dictionary? A. Yes.

Q. 34. What was the nature of that communication? A. Notifying the paper in each case to carry what we call a cautionary notice.

4592

Q. 35. As far as you know have all the newspapers which are running your advertisements been instructed to insert the cautionary notice in all advertisements of your book? A. I have carefully checked up the fact that they have all been notified.

Q. 36. Do you supply the plates to these newspapers for your advertisements? A. Well, rather the copies, not always in plate form. Our contract with each paper is not uniform. Some

(*Albert L. Swift—Cross.*)

4593

occasional papers practically write their own ads, but even those we notified of the necessity of carrying those.

Q. 37. Can you state of your own knowledge that all copies which went out from you contained this cautionary notice? A. Yes, sir.

MR. CARROLL: That is all.

CROSS EXAMINATION by Mr. Hale:

4594

x Q. 38. In your conversations with Mr. Baker to which you have referred you at all times insisted upon your right to use the name "Webster" in the title of this particular dictionary; is that correct? A. Rather than insisting on our right I asked him to point out wherein we did not have that right.

x Q. 39. Your offer to him to adopt any measures to prevent any controversy between you did not include an offer to discontinue the use of the name "Webster?" A. It included everything that did not infringe upon our own rights.

4595

x Q. 40. In other words, you intended to use the name "Webster"? A. (Interposing) If we had a right to. That is the way I put it to him.

x Q. 41. Did you discuss with him the question of any cautionary notice to accompany the name "Webster?" A. I did not discuss it with him. I told him that we were now familiar with the Ogilvie decision, and that we had ordered the wording of the cautionary notice incorporated on our title page.

4596

x Q. 42. Did you intimate a willingness to go further than this? A. Yes, sir.

x Q. 43. What did you offer to do? A. It would be a repetition of what I said before, that

4597

(Albert L. Swift—Cross.)

we would do anything that he would suggest that did not infringe upon any rights that we had.

x Q. 44. Were you at that time or are you now willing to accompany your use of the name "Webster" with the cautionary notice in the following form:

4598

"This dictionary is based upon the 1847 Edition of Webster's Dictionary. It is not published by the original publishers of Webster's dictionary or by their successors."

4599

MR. CARROLL: I object to that question on the ground that Mr. Swift is not authorized by the Syndicate Publishing Company to make any further offer of settlement than that which has already been made in writing to the G. & C. Merriam Company's counsel; and on the further ground that this witness has already stated that at that time he offered to make any concessions with the G. & C. Merriam Company which would not be an abandonment of their established legal rights.

A. I would not have any authority to make a settlement.

4600

MR. HALE: The answer is objected to as not responsive and motion is made to strike it out.

x Q. 45. Does the defendant company now object to an explanatory notice in the form stated in the last question?

MR. CARROLL: Objected to on the ground that this witness has not received authority

(*Albert L. Swift—Cross.*)

4601

from the defendant company to speak for it in this matter.

MR. HALE: The question does not call for anything involving the witness' authority, but for a statement of fact as to the defendant's position in this regard as to which the witness has testified somewhat at length.

MR. CARROLL: The witness has testified as to facts about the past; what is the present or what shall be the future policy of the defendant company can only be determined by the Board of Directors of that company. 4602

A. The policy of the Company is governed by the Executive Committee of which I am not a member, therefore I don't know whether that would be acceptable or not.

x Q. 46. From what source did you get the language of the explanatory notice which you have testified you used, namely, "This dictionary is not published by the original publishers of Webster's dictionary or by their successors." 4603

MR. CARROLL: Objected to on the ground that this witness has already testified that said cautionary notice was taken from the decree in the Oglivie case.

MR. HALE: Complainant's counsel suggests that the witness on cross examination be allowed to answer the questions for himself. 4604

A. I got the wording of that from an actual copy of the Court's decision in the Oglivie case.

x Q. 47. Why did you not use the notice exact-

(*Albert L. Swift—Cross.*)

4605

ly as contained in that decision? A. We incorporated it in our title page exactly as in that decision.

x Q. 48. But not without addition and suffix incorporated in the same sentence with it? A. We did not have the same title page as Ogilvie.

MR. HALE: The answer is objected to as not responsive.

4606

x Q. 49. Will you please read upon the record the exact form of notice which you placed in your books in the month of October, 1911? A. "This dictionary has been revised and brought up to date in accordance with the best authorities and is not published by the original publishers of Webster's dictionary or by their successors, but by the well-known Syndicate Publishing Company of New York City."

4607

x Q. 50. Why did you insert the additional matter in connection with the language required by the Ogilvie decision? A. For two reasons: First, that it was a matter of fact; second, that the Merriam dictionary that was competing with us was called a Webster's condensed dictionary and was advertised in various papers on the plan that we were using as being the latest dictionary published. An examination by me showed that it was an old, obsolete dictionary. I wanted to differentiate ours from it.

4608

x Q. 51. Could not this have been done in other parts of your advertisements and notices and not in immediate connection with and as a part of the alleged explanatory notice?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial; what could

(*Albert L. Swift—Cross.*)

4609

or could not have been done is mere speculation.

A. That is obvious. It could have been put on the cover or any place. The title page is where it would go on.

x Q. 52. Since the beginning of this suit, have you not had occasion to change that form of notice to some extent? A. Do you mean up to the present time?

4610

x Q. 53. Up to the present time? A. Yes, sir.

x Q. 54. That was by reason of the fact that a preliminary injunction was granted in this case making certain provisions in regard to that notice, was it not?

MR. CARROLL: Objected to on the ground that the record of this Court is the best evidence as to what was ordered by the preliminary injunction.

4611

A. My authority to order those changes made was instructions from the Executive Committee.

x Q. 55. And you were informed in connection with your instructions that the changes were necessitated by an injunction which had been granted? A. I don't know that I was. My inference was that it was ordered by our attorneys—or, advised by our attorneys. I don't know whether it was ever ordered by any one as a matter of fact.

x Q. 56. Were you informed of the reasons of making changes in this alleged explanatory notice which you had previously used?

4612

MR. CARROLL: Objected to as irrelevant and immaterial.

A. I don't really recall that I was. I remember Mr. Wright telling me that instead of carry-

(*Albert L. Swift—Cross.*)

4613

ing that notice in its usual form that he wanted me to put it in a separate paragraph or line, but I don't believe that I was ever given any instructions to change the wording of what is actually the cautionary notice of the Ogilvie case.

4614

x Q. 57. You have stated that the reason you used the name "Webster" upon this particular dictionary is that your book is based upon or founded upon a dictionary by Noah Webster; is that correct? A. Substantially.

x Q. 58. And that you believed that you had a legal right to use the name by reason of that fact; is that correct? A. That is correct as far as it goes.

x Q. 59. What is needed to make it absolutely correct? A. My further belief that anyone has a right to use the word "Webster" and the reason for that belief is the reading of the various Court decisions.

4615

x Q. 60. What do you mean by the phrase "based upon Webster's dictionary" as used by you? A. I did not originate that phrase. I found it in the original copyright. I can tell you what it means to my mind.

4616

x Q. 61. You have used the phrase in your testimony, and have testified that you told Mr. Baker, complainant's president, that your book was based upon the dictionary of Noah Webster, and that therefore you used the name "Webster" upon your book. What did you mean by the word based in those statements? A. The word "based" to me would mean being founded upon.

x Q. 62. What does "founded upon" mean in that connection? A. Based upon.

x Q. 63. Will you please explain those terms a little more fully? A. Well, the word don't

(*Albert L. Swift—Cross.*)

4617

occur to me; a foundation or ground word would be sufficient to give me the idea of "based upon."

x Q. 64. Do you mean by "founded upon" or "based upon" that the dictionary of Noah Webster was actually used in the compilation of your book and some portions of the matter transferred from Noah Webster's book into your book? A. Well, I am not an expert on the compilation of dictionaries. I have given the explanation of what my idea of the word "based" and "founded upon" means.

4618

x Q. 65. Does it mean what I have included in my last question to you? A. It might include that.

x Q. 66. But does it? A. Did it or does it?

x Q. 67. Does it include that in the sense in which you used those terms? A. I don't know now what you want me to answer any more fully than I have answered it. See if you can make it a little plainer to me. Do you mean, do I know as a matter of fact whether matter was taken from one book and placed in the other?

4619

x Q. 68. I do not. I want to know the meaning of the assertion which you made in your direct testimony and the meaning of the assertion which you made to Mr. Baker in the interview at Springfield in which you stated that your book was based upon the dictionary of Noah Webster. What did you mean by that? A. You don't want the reason for my meaning; you want the actual meaning.

4620

x Q. 69. The actual meaning? A. I cannot go into it any further than based upon or founded upon. I don't know what my reason for thinking it was founded upon it is.

x Q. 70. Did you mean to assert in that statement that your dictionary actually contains any

4621

(Albert L. Swift—Cross.)

matter taken from the dictionary of Noah Webster? A. I did not have anything in mind any further than as I have stated. We had a comparison made and found that it was similar in the principles enunciated by Webster and in the matter of word definitions and so forth. I cannot get more explicit than that any way that I know of.

4622

MR. HALE: So much of the witness' answer beginning with the words "We had a comparison made" and continuing to the end of the answer is objected to as not responsive and motion is made to strike it out.

4623

x Q. 71. Do you know of your own knowledge whether or not any dictionary with which Noah Webster ever had anything to do was actually used in the compilation of the dictionary published by the defendant in this case?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial; this witness has stated that he is not an expert on dictionaries.

4624

A. I did not see the copy prepared for the original of our book, but I saw it compared with Webster's 1847 and found them similar, not similar in general, but actually the same.

x Q. 72. Are you referring to the comparison made by Professor Peck, the results of which were offered upon the motion for preliminary injunction in this case? A. I don't know of anything being offered by Professor Peck or testified to.

x Q. 73. Now, will you please answer whether

(*Albert L. Swift—Cross.*)

4625

or not you know of your own knowledge or not any dictionary with which Noah Webster ever had anything to do was actually used in the compilation or preparation of the defendant's dictionary?

MR. CARROLL: Objected to as irrelevant and immaterial; already having been answered.

A. The furthest back supposed Webster that I know anything about is the 1847, and I have heard that Webster did not even have anything to do with that, but whether that is a fact I could not state of my own knowledge.

4626

MR. HALE: The answer is objected to as not responsive.

x Q. 74. Do you know of your own knowledge whether or not any dictionary of Noah Webster was actually used in the compilation of defendant's book? Please answer yes or no; the question calls for your own personal knowledge? A. Do I know whether any book gotten out by Webster was used in the compilation of our book? I cannot answer that no, or I cannot answer it yes. I have taken the book which I supposed was Webster's and gone over the comparison and yet I don't know whether the 1847 is Webster's or not. That is if you mean whether he actually did the editorial work on it.

4627

4628

x Q. 75. Do you know of your own knowledge whether the 1847 edition of Webster's Unabridged Dictionary was actually used in the compilation of defendant's book?

MR. CARROLL: Objected to as having been already answered, as being irrelevant and immaterial.

(*Albert L. Swift—Cross.*)

4629

A. I don't know. I would only judge so from the comparison of the two.

x Q. 76. In other words all that you know about the source or origin of the matter contained in defendant's book is based upon such comparison as you have made of it with the 1847 edition; is that correct? A. And my belief in the statement on the copyright that we purchased.

4630

x Q. 77. You don't know whether that statement is true or not? A. I am satisfied it is true, because it is borne out by this comparison that I speak of.

x Q. 78. You do not know, except as based upon the comparison which you have made? A. That is all, yes, sir.

x Q. 79. Who compiled the defendant's book? A. I don't know.

4631

x Q. 80. It is stated in the answer that it was prepared by a Mr. Roe and a Mr. Stuart. Do you know either of these gentlemen? A. No, sir.

RECESS TO TWO THIRTY P. M.

AFTER RECESS.

x Q. 81. Do you know the present address or location of either of these gentlemen? A. No, sir.

4632

x Q. 82. Has either one ever been employed by or in any way connected with the Syndicate Publishing Company? A. I don't know.

x Q. 83. You were not with the Syndicate Publishing Company at the time they changed the name of your book from Crown dictionary to Webster's dictionary and have no first hand knowledge of anything that occurred at the time?

(*Albert L. Swift—Cross.*)

4633

A. No, I just simply made a careful investigation of all the records of it.

x Q. 84. You personally had nothing to do with the adoption of the name "Webster" by the defendants? A. No.

x Q. 85. If it be a fact that defendant's book is based upon the 1847 edition of Webster's Unabridged dictionary, what is the objection to incorporating such statement in the explanatory notice?

4634

MR. CARROLL: Objected to, inasmuch as this witness has not testified that there was any objection to incorporating such a statement in the notice, but simply that he did not know what the policy of the Syndicate Publishing Company was with respect to such insertion.

MR. HALE: This witness is the vice-president of the defendant and has been a member of its executive committee. It is entirely proper to ascertain the fact inquired about of him.

4635

A. I can only express my personal opinion of an objection, which would be that I would consider it irrelevant.

x Q. 86. Do you consider it irrelevant to tell the whole truth about your book? A. There are many items of truth about the book as to the press run of each edition and all of that that I would consider irrelevant.

4636

x Q. 87. I mean the truth about its connection with any Webster dictionary? A. Well, all pertinent truths there would be no objection to.

x Q. 88. Is there then any objection to stating

(*Albert L. Swift—Cross.*)

4637

the particular edition upon which the defendant claims to have made its book?

MR. CARROLL: Objected to as having already been fully answered in previous questions.

A. My objection would simply be a personal objection; I would consider it entirely irrelevant.

4638

x Q. 89. Is there any commercial or business reason why it should not be stated that it is the 1847 edition of Webster upon which defendant's book is based, if that be in truth the fact? A. I don't know of any damage it would do us, speaking personally.

x Q. 90. How many editions of this book have been published by defendants since your connection with them?

4639

MR. CARROLL: Objected to, and I direct the witness not to answer.

(Witness withholds answer.)

MR. HALE: The Examiner is requested to certify this question to the most convenient Judge for a ruling as to the propriety of the question.

4640

x Q. 91. Have you any information whatever as to where Mr. Roe or Mr. Stuart, who are named in defendant's answer, may be found? A. No, I have not.

x Q. 92. What precise part of the defendant's business comes under your immediate supervision or observation? A. At the present time?

x Q. 93. At various times during your connection? A. Well, practically I installed the newspaper premium feature in this business.

x Q. 94. When was that? A. In January, 1911.

(*Albert L. Swift—Cross.*)

4641

That is, I don't mean that they had never done anything of that kind, but practically a small issue.

x Q. 95. Continue with your answer. A. Well, that is about all. I have generally superintended the work with the newspapers.

x Q. 96. Who prepares the advertising matter and notices which have appeared in the newspapers? A. I did originally.

4642

x Q. 97. Up to what date? A. Well, everything that has been done since has practically been an offshoot of my original work; since then I practically supervised it.

x Q. 98. Who has prepared this matter since you ceased to do so personally? A. Well, I have always had assistants under me.

x Q. 99. Who since January 1, 1911, naming all of them, have prepared the newspaper publicity? A. I have been pretty much responsible for it; that is, I have not read every detail of it and every line of it, but I have held the responsibility for it. In addition to me, my assistant, Mr. Johnson; then we have quite a number of assistants in the way of clerks, filing clerks, and things of that kind, but as far as applying to the wording of the advertisements that ought to hit either Mr. Johnson or myself practically all the time.

4643

x Q. 100. As carried on the copy is prepared by the Syndicate Publishing Company through some of the gentlemen named. Is this set up, then, by the newspapers or do you furnish plate matter? How is that done? A. Both ways. Some of it that has been printed has been prepared by newspapers.

4644

x Q. 101. Can you designate in any way what

(*Albert L. Swift—Cross.*)

4645

newspapers or what matter has been prepared by them? A. Some newspapers change our copy, some reserve that right to do so, some do it anyhow; just don't follow our schedule.

x Q. 102. Can you name some of the newspapers that reserve the right to change your copy? A. New York American, Boston Herald—as a matter of fact, Mr. Hale, practically all papers reserve that right.

4646

x Q. 103. And what is the purpose and extent of such reservation? A. Simply that the papers have the final say-so as to anything that goes in their columns. Then we will often send a large ad and the exigencies of printing the paper won't permit it being used. They pick up an ad a month old, a similar one on that date.

4647

x Q. 104. You know, do you not, that even since the beginning of this suit some of the advertisements of your dictionary have been published in newspapers without any warning or explanatory notice? A. Yes, my attention has been called to one or two cases.

x Q. 105. When did you first put such warning notice in the coupon advertisement which appears in the various papers in addition to the ordinary advertisements? A. I don't know. Our order was issued to put it on all advertising on October 9th.

4648

x Q. 106. You know as a matter of fact, do you not, that such notice was never inserted in the coupon advertisements until the preliminary injunction in this suit was issued some time in March of this year? A. No, I don't know that of my knowledge.

x Q. 107. Can you ascertain the fact here in this office?

(*Albert L. Swift—Cross.*)

4649

MR. CARROLL: Objected to as irrelevant and immaterial.

A. I would not know how to. We don't keep a record of those matters.

x Q. 108. Did you at any time give instructions to any person or to any newspaper or prepare any new or revised copy for coupon advertisements for the purpose of having the warning notice inserted in those advertisements? A. On October 9th we instructed every paper in all of their advertising to use the cautionary notice.

4650

x Q. 109. You continued to furnish copies for the coupon advertisements which did not contain this notice after October 9th? A. Not to my knowledge.

x Q. 110. Have you any knowledge or information as to a letter being sent by complainant's counsel in this case calling attention to the fact that the coupon advertisements had not contained the notice required by the preliminary injunction? A. No.

4651

x Q. 111. You have no information on that subject whatever? A. No. Anything like that would have to come in under my trip out. I am away about half the time.

x Q. 112. What is the fact according to the best of your knowledge, information and belief as to whether or not the coupon advertisements published in the newspapers have contained any warning notice prior to, say, March 1st, 1912? A. I don't believe that I know of any that contained it. Under our contracts with papers we don't pay for the coupon advertising, so we more rigorously scrutinize our own paid advertising display.

4652

(*Albert L. Swift—Cross.*)

4653

x Q. 113. Is the coupon advertisement in whole or in part printed from plates or cuts furnished by the defendant? A. We send out plates with the coupon advertisements; the paper does not follow them.

x Q. 114. You mean never? A. No, no, not always.

4654

x Q. 115. Isn't the plate used with changes to adapt it to the paper of various names and the dates of issue? A. Oh, there is a mortise line; just a date line. The Boston Herald, for instance—we never send them the coupon they use.

x Q. 116. Since the preliminary injunction was granted in this case, have your advertisements always contained the warning notice there required, printed in a separate line or paragraph by itself? A. All copies sent by us since then have contained that.

4655

x Q. 117. I show you an advertisement cut from the Aurora Daily Beacon News of May 4th, 1912, and call your attention to the warning notice therein contained. Is not that notice in the form which you adopted in October, 1911, instead of being printed in a separate colum or paragraph such as has been sometimes used since the granting of the preliminary injunction?

4656

MR. CARROLL: Objected to as not the best evidence, the advertisement speaks for itself.

A. Yes.

MR. HALE: The advertisement is offered in evidence and the same is received and marked Complainant's Exhibit, Defendant's Advertisement of May 4th, 1912, J. A. S. Ex'r., May 10th, 1912.

(*Albert L. Swift—Cross.*)

4657

x Q. 118. Prior to the adoption and use by you of the statement which you say you adopted in October, 1911, did the name of the Syndicate Publishing Company as the publisher of this book appear in any of this newspaper advertising? A. Yes, in some.

x Q. 119. Will you please point out or indicate in any way in which advertising it appeared? A. I would have to look it up.

x Q. 120. Will you please look it up and give us the information at a later date? A. Yes.

4658

x Q. 121. Please look at the advertisements contained in "Complainant's Exhibit Defendant's Advertisements" and indicate by name of paper and page of exhibit any advertisements which contain the name of the Syndicate Publishing Company as the publisher of the dictionary advertised?

MR. CARROLL: Objected to; the advertisements speak for themselves.

4659

(The witness declines to answer under advice of counsel.)

x Q. 122. It is a fact, however, that the great majority of the advertisements used in the newspaper campaign to which you have referred issued prior to October, 1911, did not contain the name of the Syndicate Publishing Company as the publisher of the dictionary advertised?

4660

MR. CARROLL: Objected to; the advertisements themselves are the best evidence, and I direct the witness not to answer.

MR. HALE: Complainant is in possession of only some specimen advertisements used by defendant. The question relates to any and all advertisements issued by the de-

(*Albert L. Swift—Cross.*)

4661

fendant and complainant has no other means of obtaining the information except through this witness. An answer is therefore insisted upon.

(The witness declines to answer under advice of counsel.)

4662

MR. HALE: The examiner is requested to certify this question to the most convenient judge for a ruling as to the propriety of the question and the sufficiency of the answer.

x Q. 123. Will you please designate any advertisements issued in this newspaper campaign prior to October, 1911, which gave the name of the Syndicate Publishing Company as the publisher of the dictionary advertised?

4663

MR. CARROLL: Objected to as having already been answered.

A. Only an examination of the ads would show me.

x Q. 124. Will you make such an examination and produce a list of such papers? A. Impossible. I don't know just how to go at it to find ads that old. We carry them out here by wagon loads every morning.

4664

x Q. 125. In view of the fact that this advertising is under your supervision are you able to state that the name of the Syndicate Publishing Company as the publisher of the dictionary advertised has never been given in any of the advertisements used in this newspaper campaign except since October, 1911, and then only in connection with the alleged warning statement that "This dictionary has been revised and brought up to this present date in accordance with the best

(*Albert L. Swift—Cross.*)

4665

authorities and is not published by the original publishers of Webster's dictionary or by their successors, but by the well-known Syndicate Publishing Company of New York City."

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial; the advertisements themselves being the best evidence of what they contain.

A. I am not able to state that the name "Syndicate Publishing Company" has never been used in advertising previous to October, 1911. I desire to change my answer by reason of the question being involved to read as follows:

4666

I am not able to state that.

x Q. 126. Does the defendant keep an advertising register or the equivalent in which copies of all advertisements issued are preserved? A. No. We simply measure them up for space.

x Q. 127. In October, 1911, when you first changed your title page and advertisements so as to carry what has been termed an explanatory or warning notice, did you have a quantity of manufactured dictionaries on hand which did not contain that notice? A. Yes.

4667

x Q. 128. What did you do with them? A. I cannot tell. I know that at some time they made their correction in all manufactured books on hand, but whether it was in October or at a later date I don't know.

4668

x Q. 129. Was that not after the preliminary injunction had been granted? A. I cannot state.

x Q. 130. Was it not after March 1st, 1912, at least? A. I cannot state. I have a pretty good impression that it was after the preliminary injunction, but I cannot state as a matter of fact. There will be somebody that can.

4669

(Albert L. Swift—Cross.)

x Q. 131. In order to refresh your memory, I call your attention to the affidavit made by you and verified on February 9th, 1912, which was used upon the motion for a preliminary injunction herein in which you state as follows:

4670

“At the same time we changed our title page by printing the above quoted language at the top thereof, and in such dictionaries *as were in process of manufacture*, we substituted the new title page with said inscription and we also gave orders at that date to have the name of the Syndicate Publishing Company printed in gilt letters at the foot of the back of the cover of each dictionary and all our dictionaries manufactured since that date have had our name thus prominently printed there.”

This statement refers to the date October 9th, 1911.

4671

Your recollection at that time was fully as good as it is now, was it not? A. All that was a fact then and still is now as far as it goes.

4672

x Q. 132. You said nothing at that time as to any changes in completely manufactured books. With your memory thus refreshed are you able to state that the insertion of the notice in completed books was made subsequent to that date? A. It would be impossible to state. There is no possible way that I would know that we had one completed book. The majority of our time we would not have any stock on hand to fill our orders.

x Q. 133. On October 9th, 1911, were there quantities of dictionaries in the hands of newspapers or other persons handling them which did not contain this notice? A. I could not tell. Undoubtedly there would be, but of my own knowledge and belief as to seeing them there, I don't know. I would think so.

(*Albert L. Swift—Cross.*)

4673

x Q. 134. Did the defendant in any way caution newspapers or other persons having these dictionaries to dispose of, not to dispose of them without inserting the cautionary notice? A. May I inquire, do you mean papers to whom we had sold books previous to October 9th?

x Q. 135. Yes. A. Not to my knowledge.

x Q. 136. As one of the defendant's managers, and as the one particularly in charge of the newspaper distribution, you would know that fact if it were a fact, would you not? A. No.

4674

x Q. 137. Who would know it? A. I don't know. I had nothing at all to do with the manufacture except as I would just on my own motion keep track of it. Mr. Wright attended to all the manufacturing.

x Q. 138. I am not speaking of the manufacturing; I am asking whether on or about October 9th, the defendant instructed persons to whom it had previously shipped books for distribution not to sell or dispose of them except in connection with a warning or explanatory notice? A. I have answered that fully, that I did not send such a notice to anyone to whom we had sold books previous to that date, and I have no knowledge that anyone else did or that they did not.

4675

x Q. 139. Who would have absolute knowledge of that fact? A. I would not know without it would be Mr. Wright.

x Q. 140. If any such notices were sent, defendant would have copies of them preserved in its office, would it not? A. I don't know.

4676

x Q. 141. You have stated that you instituted this newspaper plan of distribution of this dictionary. Please state the general nature of the scheme as actually operated by defendant. A.

4677

(Albert L. Swift—Cross.)

I decline to answer this question for the reason that the complainant company have from the start of our original scheme endeavored to secure our contract forms and other forms that have made this a successful campaign, and have as a matter of fact secured and are using a large portion of these original forms, plans and methods of our own. We decline to furnish them any further assistance in this line.

4678

MR. HALE: The answer and statement of the witness is objected to as not responsive, and as a volunteered statement of the witness which is incompetent, irrelevant and immaterial and not in accordance with the facts, and motion is made to strike it out.

4679

The Examiner is requested to certify the question to the Court for a ruling as to the propriety of the question and the duty of the witness to answer.

MR. CARROLL: And objection is made to this question on the ground that it is incompetent, irrelevant and immaterial, and on the further grounds stated by the witness, which said statement of the witness is made a part of this objection.

4680

x Q. 142. Are the dictionaries distributed through the newspapers sold outright to the newspapers or are they consigned to them and subject to return if not distributed by the papers?

A. What dictionaries?

x Q. 143. The defendant's dictionaries sold in connection with the newspaper coupon scheme?

A. Your question cannot be answered by yes or no; it would have to be yes and no. I will have to

(*Albert L. Swift—Cross.*)

4681

know what particular dictionaries you mean. We have done business both ways.

x Q. 144. Have you done business both ways concurrently or did you do business during one period one way and during another period another?

MR. CARROLL: I object to this whole line of examination as coming within the objection which has already been made and upon which the witness refused to answer the question before the last. 4682

MR. HALE: An answer is insisted upon, such an answer involves no disclosure of trade secrets. It is obviously material to know whether these newspapers are selling their own books after having completed a purchase of them from the defendant or whether the defendant still retains any right, title or interest in such books, until they are disposed of to the ultimate purchaser. 4683

A. Concurrently.

x Q. 145. Were any of these dictionaries disposed of by newspapers upon a commission basis in which the newspaper obtained a commission upon the amount sold?

MR. CARROLL: Same objection. 4684

A. I will not answer for the reason given in my previous refusal.

MR. HALE: The Examiner is requested to certify this question to the Court for a ruling as to its propriety and the duty of the witness to answer the same.

4685

(Albert L. Swift—Cross.)

x Q. 146. In what manner were the newspapers paid for the advertising they used in this dictionary distribution?

MR. CARROLL: Same objection.

A. Different ways.

x Q. 147. Please specify the different ways?

A. I refuse to answer for the same reason.

4686

MR. HALE: The Examiner is requested to certify this question also for a ruling of the Court.

x Q. 148. Did the defendants pay full advertising rates for the space occupied by the advertisements of these dictionaries in connection with the newspaper coupons?

MR. CARROLL: Same objection.

4687 A. Same reply.

MR. HALE: Same request to the Examiner.

x Q. 149. Does the defendant employ standard forms of contracts with the newspapers for use in this plan of distribution?

MR. CARROLL: Same objection.

4688

A. Several different ones. We were forced to change our original form after we discovered that the complainant's representative had secured one of our forms when he was in our employ.

MR. HALE: The concluding portion of the answer beginning with the words "We were forced," and so forth, is objected to

(*Albert L. Swift—Cross.*)

4689

as not responsive and as incompetent, irrelevant and immaterial, and motion is made to strike it out.

x Q. 150. Please produce blank forms of the contracts with newspapers which have been used up to the institution of this suit.

MR. CARROLL: Same objection.

A. Refused.

4690

MR. HALE: The Examiner is requested to certify this question also to the Court for a ruling as to the duty of the witness to produce the papers called for. Defendant's counsel are called upon to produce for use in evidence in this case copies of the forms of contracts referred to by the witness, such contracts being those used in connection with the newspaper distribution of defendant's dictionary during the year 1911, and prior to the institution of this suit.

4691

MR. CARROLL: Defendant's counsel declines to produce any such forms of contracts on the ground that the business relations between the Syndicate Publishing Company and the newspapers is entirely irrelevant and immaterial in a suit brought by the G. & C. Merriam Company against the Syndicate Publishing Company based upon allegations of unfair competition, and on the further ground that this is an obvious attempt by counsel for the complainant to pry into the secret business relations of the defendants by means of this examination.

4692

MR. HALE: The purpose of this line of examination is to fix the defendant with

4693

(Albert L. Swift—Cross.)

responsibility for the deception of purchasers who have purchased this book through the newspapers who have in turn obtained it from the defendant, the Syndicate Publishing Company. If the defendant will by stipulation on the record assume responsibility for all advertisements of their dictionary which have appeared in the newspapers and for all deception of purchasers who have obtained such dictionary from said newspapers, complainant will not press this line of examination.

4694

MR. CARROLL: Defendants decline to make such a stipulation.

x Q. 151. Whatever the details of this newspaper scheme may be, it was brought by you to the defendant when you came to it; is that correct?
A. I instituted it.

4695

x Q. 152. Do these contracts with newspapers contain any stipulations in respect to the contents of advertisements which shall appear in said papers?

MR. CARROLL: Same objection.

A. I decline to answer.

MR. HALE: Same request to the Examiner to certify the question to the Court.

4696

x Q. 153. What is the highest price at which any edition of defendant's dictionary has been sold since your connection with the defendant? I don't mean wholesale price or anything like that; I mean per copy put out to the customer?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

(*Albert L. Swift—Cross.*)

4697

A. I decline to answer.

MR. HALE: The Examiner is requested to certify the question to the Court for a ruling.

x Q. 154. Has defendant had this book regularly on sale in bookstores since the beginning of this newspaper campaign? A. I refuse to answer for the reason that I do not care to explain to the complainant where our trade lies, or any portion of it.

4698

MR. HALE: The answer of the witness is objected to as not responsive, and motion is made to strike it out, and the Examiner is requested to certify the question to the Court for a ruling as to its propriety and the sufficiency of the answer, and the duty of the witness to answer same fully.

x Q. 155. Has this book ever been sold in bookstores to your knowledge?

4699

THE WITNESS: Same refusal for the same reason originally given.

MR. HALE: Same request to certify the same to the Court.

x Q. 156. Were these contracts with newspapers negotiated by correspondence or by personal interview?

4700

MR. CARROLL: Objected to as irrelevant and immaterial.

A. Same refusal.

MR. HALE: Same request to the Examiner to certify to the Court.

4701

(Albert L. Swift—Cross.)

x Q. 157. Please give a list of all the newspapers which have distributed this book under contract with the defendant company since January 1st, 1911, and prior to the institution of this suit; that is to say, under contracts made or dated in that period? A. I refuse to give you the details of our relations with our customers.

4702

x Q. 158. The question does not ask for details? A. Any details whatever.

MR. HALE: The Examiner is requested to certify this question to the Court for a ruling as to the propriety of the question and the duty of the witness to answer same and give information called for.

4703

x Q. 159. In addition to the ordinary newspapers who have engaged in the distribution of this book, has it also been distributed through other periodicals? A. Same refusal.

MR. HALE: Same request to the Examiner to certify the question.

x Q. 160. Please give a list of all the periodicals through whom this book has been distributed prior to the beginning of this suit? A. Same refusal to answer.

4704

MR. HALE: Same request to the Examiner to certify the question.

x Q. 161. Please state how many of defendant's dictionaries were distributed through this newspaper campaign prior to the institution of this suit?

MR. CARROLL: Objected to as irrelevant and immaterial.

(*Albert L. Swift—Cross.*)

4705

A. I don't know.

x Q. 162. As vice-president of the defendant and as one of its managers, have you information sufficient to say whether or not the defendant has distributed upwards of five hundred thousand copies of this dictionary through the newspapers of this country in what has been termed this newspaper campaign? A. Up to date?

x Q. 163. Up to date, yes.

4706

MR. CARROLL: If you answer the questions precisely, I have no objection to it.

Answer yes or no, whether you have such information.

A. I have not that definite information.

x Q. 164. Where can that information be obtained and from whom? A. I think you could not obtain it.

x Q. 165. Has the defendant no means of knowing how many dictionaries it has disposed of through the newspapers since January 1st, 1911?

4707

A. I presume it has.

x Q. 166. Will you procure that information and testify to it upon the record? A. No.

x Q. 167. You have testified that this newspaper scheme devised by you resulted in enormously increased sales of this dictionary by defendant. Please state the extent to which such sales were increased to an extent termed by you "enormous" or "enormously?"

4708

MR. CARROLL: The question is objected to on the ground that incorrectly summarizes the witness' testimony; the only testimony that was given by the witness on this subject was in answer to one of the

(*Albert L. Swift—Cross.*)

4709

questions of defendant's counsel in which defendant's counsel quoted from the affidavit of Kirk N. Washburn in which the the word "enormously" was used. The witness in his answer did not use the word "enormously"; he simply stated that the sales were largely increased after his business campaign began. Reference to the testimony will show that this is the fact (see Q. 27).

4710

A. I did not use the word "enormous," but used the expression "very largely increased."

x Q. 168. Upon what information as to amount of sales was that answer based? A. Just a general knowledge of what we were doing.

4711

x Q. 169. Having answered from such general knowledge on behalf of the defendant, please answer upon the same knowledge, and state the minimum approximate number of dictionaries disposed of through this newspaper scheme of yours subsequent to January 1st, 1911?

MR. CARROLL: Objected to as irrelevant and immaterial. The question was asked in the first place by defendant's counsel simply in rebuttal of the testimony of Mr. Washburn. It has already been sufficiently answered for that purpose.

4712

MR. HALE: Defendant's counsel is reminded that this is cross-examination, and complainant is entitled to a full and complete statement.

MR. CARROLL: Complainant's counsel is reminded that this is not an accounting and that therefore the amount of defendant's sales is quite immaterial.

(*Albert L. Swift—Cross.*)

4713

MR. HALE: Defendant's counsel opened the door.

A. I could not do it.

x Q. 170. According to your best recollection, information and belief, is that number in excess of five hundred thousand copies? A. I refuse to guess on it.

MR. HALE: Complainant's counsel is unable to complete the cross-examination of this witness until the questions certified to the Court have been ruled upon and the witness has answered such questions as the Court rules should be answered.

4714

MR. CARROLL: Defendant's counsel requests complainant's counsel to ask now any further questions which he may have to ask so that they may all be certified to the Court at once, in order to avoid the necessity of going twice to the Court.

4715

MR. HALE: Complainant's counsel so far as at present advised has completed the cross-examination of this witness, except so far as the questions to be certified remain unanswered and such questions as may grow out of the answers which the witness may make to such questions. The Examiner is requested to adjourn the further examination of this witness until the questions have been ruled upon by the Court.

4716

(Further hearing adjourned to Thursday, May 16th, 1912, at 1:30 P. M.)

4717

NEW YORK, Thursday, May 23d, 1912.
2 P. M.

Met pursuant to adjournment noted on page 1123 of this record.

Present—Counsel as before.

A. L. SWIFT, resumes the stand.

CROSS EXAMINATION continued by Mr. Hale:

4718

x Q. 171. I show you an advertising leaflet and ask you if you can identify that as one of the advertising leaflets or circulars issued by the defendant Syndicate Publishing Company? (Handing witness leaflet) A. No. It is not anything I have ever come in contact with.

x Q. 172. I understand that this was issued by the defendant some time during year 1910. Do you know anything about it whatever? A. No, I was not with the defendant then.

4719

x Q. 173. How many editions of defendant's dictionary were issued in the year 1911 up to the time of the suit? A. I would not know.

x Q. 174. By editions, I mean printings of the book with revisions or changes embodied in it? A. I understand. I would not know.

x Q. 175. In addition to being an officer of the defendant, you are a member of its Board of Directors? A. Yes, sir.

4720

x Q. 176. I presume you do not hold a controlling interest in the Syndicate Publishing Company? A. Only shares issued to me for the purpose of qualifying as a director.

x Q. 177. During 1911, did defendant have its dictionary regularly on sale in retail bookstores,

(*Albert L. Swift—Cross.*)

4721

and if so, to what extent? Answer fully. A. I would not know whether they did or not, by reason of my work being almost wholly with the newspapers.

x Q. 178. Did the defendant have a retail list price for its book during the year 1911? A. I am such a bum book man that I don't know what retail list price means. I will ask you, what do you mean by a retail list price?

x Q. 179. As publisher, do you not know what a list price is? A. I have never published books.

4722

x Q. 180. Your company has, though, and you have been a member of its Executive Committee, have you not? A. I have been a member of its Executive Committee, was for a few months, but I don't consider myself a publisher; I don't know the usages or the terms.

x Q. 181. While you were a member of the Executive Committee of the Syndicate Publishing Company, the question of fixing a list price for your books was never brought to your attention; is that correct? A. I don't recall it.

4723

x Q. 182. Did defendant sell any books by subscription or through canvassers during the period of your connection with it, to your knowledge? A. Yes.

x Q. 183. How many canvassers did it have employed? A. A large number.

x Q. 184. About how many? A. Well, that did not fall in a department that I was connected with, and I would not be able to say how many. Mr. Wright would know.

4724

x Q. 185. Were these canvassers regularly in the employ, receiving salaries from the defen-

4725

(Albert L. Swift—Re-Direct.)

dant? A. I don't know whether they worked on salary or on commission.

x Q. 186. At what prices were these canvassers authorized to sell the dictionary? A. I recall that the dictionary was part of a set of six books, of which the dictionary comprised two volumes, and the entire set sold for eighteen dollars on subscription.

4726

x Q. 187. Was this the work known by the name of "New Century Reference Library" which your president, Mr. Wright, has referred to in his testimony? A. I have not seen his testimony, and I don't recall the exact name of the series, as I never sold it personally.

x Q. 188. Has this dictionary been sold by canvassers except as part of that set, to your knowledge? A. I would not know.

4727

MR. HALE: Cross examination closed. The request to the Special Examiner to certify certain questions arising on the examination of this witness is withdrawn.

RE-DIRECT EXAMINATION by Mr. Carroll:

4728

Re-D. Q. 189. On cross examination question No. 104, you were asked whether or not you knew that since the beginning of this suit, some of the advertisements of your dictionary have been published in newspapers without any warning or explanatory notice. You answered, "Yes. My attention has been called to one or two cases." How was your attention called to those cases?

MR. HALE: Objected to as irrelevant and immaterial.

A. By complainant.

(*Albert L. Swift—Re-Direct.*)

4729

Re-D. Q. 190. Did you investigate those cases?
A. Yes, sir.

Re-D. Q. 191. What did you discover? A. That the fault was due to the fact that the newspaper had again repeated an old ad sent them weeks previous to the time.

Re-D. Q. 192. Approximately when did you discover that those advertisements had been sent to them, or before what date? A. I recall one in particular, the Mobile Item that our attention was called to, an advertisement printed toward the middle of December, and I found it was a repetition by the paper of an advertisement sent them early in September, of which they had just again used the matrix of the advertisement they had previously set up.

4730

Re-D. Q. 193. On the cross examination of Mr. Wright, he was asked to produce a copy of the letter which you have both stated was sent out to all the newspapers at the time when the cautionary notice was inserted on the title page of your dictionaries. Mr. Wright did not produce a copy of that letter. Can you produce a copy of that letter? A. No, I cannot. I have endeavored to do that.

4731

Re-D. Q. 194. Have you a copy of the letter in your files? A. I was unable to find it.

Re-D. Q. 195. Can you give the contents of that letter? A. It was a letter that I wrote at the same time that I sent the letter to Mr. Johnson, signed by Mr. Wright and I would like to explain that in many instances we send a circular letter to the papers on the list with whom we are running this circulation scheme and they have been treated as circular letters, and no carbons kept of them. Occasionally we look for a carbon of something we

4732

4733

(Albert L. Swift—Re-Direct.)

know we have attended to and find it had gone out in general or circular form.

Re-D. Q. 196. Did you send these letters out yourself? A. Yes.

Re-D. Q. 197. You know of your own knowledge that they went to all newspapers that were on your list at that time? A. All that were on our list.

4734

Re-D. Q. 198. Was the contents of the letter substantially the same as the contents of the letter which you sent to Mr. Johnson? A. It was, yes, sir.

Re-D. Q. 199. And which is already in evidence? A. Yes.

Re-D. Q. 200. Did you also send with each one of the letters to the newspapers a sticker in the form which I show you (handing witness sticker)? A. Yes, that is what impresses it so clearly on my mind.

4735

MR. CARROLL: I read the text of the sticker which the witness has just testified having sent to the newspaper with his letter into the record:

4736

"This dictionary has been revised and brought up to the *present date* in accordance with the best authorities and is *not* published by the original publishers of Webster's Dictionary, or by their successors, but by the well known Syndicate Publishing Company of New York City."

Re-D. Q. 201. On cross examination you were asked, question 127, "In October, 1911, when you first changed your title page and advertisements so as to carry what has been termed an explanatory or warning notice, did you have a quantity

(*Albert L. Swift—Re-Direct.*)

4737

of manufactured dictionaries on hand which did not contain that notice?" You answered, "Yes." Was that answer correct? A. I have looked it up since, and I find that after September 1st, and until the end of the year we never had a quantity of manufactured books on hand, but were always behind on our orders, and I am therefore satisfied that on October, 1911, there were no stock of books on hand that could have been corrected. Corrections were simply made on the title pages of the work in hand.

4738

Re-D. Q. 202. In your answer to question 130, you said, "I have a pretty good impression that the correction was made in manufactured books after the preliminary injunction, but I cannot state as a matter of fact." Have you since looked up this matter? A. I have since looked up this matter.

Re-D. Q. 203. And refreshed your recollection? A. And I find that all books that have come into our possession by return from papers to whom we had sold them have been corrected in regard to the title page and the cover stamped as fast as they have been received.

4739

Re-D. Q. 204. On question 117, counsel for complainant offered in evidence an advertisement cut from the Aurora Daily Beacon News of May 4th. Did you have anything to do with that advertisement? A. It looks like one that I have looked up since then.

4740

Re-D. Q. 205. Was the copy for that advertisement sent out before the preliminary injunction? A. Yes.

MR. CARROLL: That is all.

4741 (Albert L. Swift—*Re-Cross.*)

RE-CROSS EXAMINATION by Mr. Hale:

Re-x Q. 206. The advertisement last referred to, appearing in the Aurora Daily Beacon News on May 4th, 1912. How do you know that the copy was sent prior to the preliminary injunction in this case? A. I looked up the record from which it was sent.

4742 Re-x Q. 207. What sort of a record have you? A. A record showing what date certain copies are sent.

Re-x Q. 208. Do you mean you have a copy of this advertisement? A. No.

Re-x Q. 209. What exactly does your record show on that subject? A. The name or number of the ad.

4743 Re-x Q. 210. What is your system as to naming or numbering ads, so that I can understand your testimony? A. For instance, this ad is what we call a closing ad. We have a record of when we sent the closing copy, just the word "closing."

Re-x Q. 211. Your record does not show what was in the copy that was sent? A. No.

Re-x Q. 212. After sending this copy, did you send any additional warning notice or instructions to the Aurora Daily Beacon News in respect to their use of such copy? A. I don't know of it.

4744 Re-x Q. 213. Are there any other instances of advertisements published after the preliminary injunction from copies sent out before that date? A. I have not looked up any.

Re-x Q. 214. What is your best information and belief on that subject? A. Unquestionably there are ads of that nature that are published now when copies were sent several months ago.

Re-x Q. 215. You spoke of certain dictionaries being returned by newspapers and then having

(*Albert L. Swift—Re-Cross.*)

4745

certain corrected or reformed title pages placed in them. Under what circumstances were such dictionaries returned? A. The goods were sold to the papers on consignment with the agreement on our part to take back any unsold copies.

Re-x Q. 216. At the end of the campaign? A. At the end of the circulation campaign.

Re-x Q. 217. You have referred on your re-direct examination to certain newspaper advertisements which you stated were re-printings of earlier advertisements. What particular newspapers, and the issue of what date do you refer to in your answer to that question? A. I mentioned one that I had directly in mind, the Mobile Item. 4746

Re-x Q. 218. Did you discuss any other instances? A. There are other instances that I have looked up that have been called to my attention, but I don't recall the names of the papers.

Re-x Q. 219. When did you look them up? A. At whatever time they had been called to my attention. 4747

Re-x Q. 220. Did you make this investigation since you were last on the stand testifying? A. As to the Aurora Beacon, I did only; that is the first time it was called to my attention.

Re-x Q. 221. Do you know of any such instances occurring in the New York American? A. I don't recall having looked up any.

Re-x Q. 222. Then you don't recall any such instances? A. I don't recall having looked up any at all. 4748

Re-x Q. 223. Do you recall anything in that regard as to the Buffalo News or in fact any other paper? A. Not by name of the paper.

Re-x Q. 224. You have offered in evidence the language of what has been termed a sticker which

(*Albert L. Swift—Re-Cross.*)

4749

you say was sent to the newspapers, with which you were operating, on October 9th, 1911. Who supplied the language of that sticker? A. I don't recall just who wrote that out.

Re-x Q. 225. Did you have anything whatever to do with it? A. I think I did.

Re-x Q. 226. Is it not in fact your own language or your composition? A. I could not say as to that.

4750

Re-x Q. 227. I show you a letter dated October 9th, 1911, addressed to your advertising manager, Mr. Johnson, and signed by your president, Mr. Wright, which you have produced here which contains the following language:

"You will at once place in every announcement or advertisement a prominent statement to the effect that our dictionary is not published by the original publishers of Webster's dictionary or by their successors."

4751

The sticker contains that language as part of a sentence, but with a prefix and a suffix. Who is responsible for the language of the prefix and the suffix?

MR. CARROLL: Objection is made to the form of this question unless in place of the stars is put the following language:

"Used by each and everyone of the papers handling our dictionary."

4752

A. In my previous answer I covered that, I don't recall who actually did the writing of that.

Re-x Q. 228. You saw it, though, before it was issued and approved of it? A. Oh, yes, the stickers were printed before the letter was written. The letter reached Mr. Johnson with the sticker on it.

(*Albert L. Swift—Re-Cross.*)

4753

Re-x Q. 229. The letter was therefore substantially a direction to use a statement in the form of the sticker? A. Yes, sir.

Re-x Q. 230. This sticker was first issued, and its language first used not earlier than October 9th, 1911; is that correct? A. My recollection of the origin of the copy of the sticker is that it was copied from the corrected title page.

Re-x Q. 231. And the date of that first use of this language, either in advertisements or on the title page of your books, was October 9th, 1911? A. Previous to that. 4754

Re-x Q. 232. How much previous? A. Oh, just a very few days.

Re-x Q. 233. The words in that sticker, "Present Date," therefore refers to a date on or about October 9th, 1911? A. I would not so construe it.

Re-x Q. 234. How do you construe it?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial. 4755

A. My construction of it is that it meant that it had been brought up to the present time, in general.

Re-x Q. 235. Brought up by whom? A. By the parties that Mr. Wright had working on the dictionary.

Re-x Q. 236. You mean by the Syndicate Publishing Company through its agents or employees? A. Through whomever it hired to do that. 4756

Re-x Q. 237. The book was acquired by the defendant in 1908. The revision referred to in the language of this sticker therefore means revision by the Syndicate Publishing Company in or subsequent to the year 1908? A. I would think it

(*Albert L. Swift—Re-re-Direct.*)

4757

would take in also previous revisions that had been made on the books before the purchase of the plates.

Re-x Q. 238. Made by whom? A. Well, I cannot testify as to that.

Re-x Q. 239. You mean you don't know? A. I have no knowledge of who was hired except as it states on the title page, previous to the time the

4758

Syndicate bought it.

Re-x Q. 240. This letter to your Mr. Johnson is written upon a regular letterhead of the Syndicate Publishing Company? A. Yes, sir.

MR. HALE: I offer in evidence the following language from the letterhead produced as descriptive of the business of the Syndicate Publishing Company:

"Makers and promoters of premium specialties."

4759

RE-RE-DIRECT EXAMINATION by Mr. Carroll:

Re-Re-D. Q. 241. Was any notice sent to the newspapers which were running this advertising after the preliminary injunction?

MR. HALE: Objected to as immaterial.

A. I cannot answer that as to my own actual knowledge.

4760

Re-Re-D. Q. 242. Will you find out? A. Yes, I can find out.

Re-Re-D. Q. 243. Do now. Have you refreshed your recollection on this point? A. I already knew that an order had been issued to do it, but I have ascertained that the order was carried out.

Re-Re-D. Q. 244. What was that order? A. The order was a revision of the wording of the caution-

(*Albert L. Swift—Re-re-Direct.*)

4761

ary notice setting forth the fact that the wording of the cautionary notice as ordered by the Court must be in a separate line or paragraph and in the exact wording of the court.

Re-Re-D. Q. 245. Have you a copy of that letter?

A. I think it can be produced, I have not a copy of it.

Re-Re-D. Q. 246. Will you see if you can get it?

A. (Witness produces letter.)

Re-Re-D. Q. 247. Please read it into the record?

4762

A. The letter is as follows:

"April 11th, 1912.

THE POST INTELLIGENCER,
Seattle, Wash.

GENTLEMEN:

We are pleased to advise you that the United States District Court has recently confirmed our opinion as to the advisability of clearly marking the difference between our modern up-to-date dictionaries and the antiquated and often absolute editions offered to the public by other publishers. It is therefore necessary that in all our display advertisements, reading notices, coupons or other announcements in your paper, the following cautionary notice be inserted:

4763

"This dictionary is *not* published by the original publishers of Webster's dictionary or by their successors.

4764

"It has been revised and brought up to the *present date* in accordance with the best authorities and is published by the well known Syndicate Publishing Company of New York."

Please note also particularly that the first portion of this notice must be printed in a separate line or paragraph from any other matter.

On all the copy for display advertising and

(*Albert L. Swift—Re-re-Cross.*)

4765

reading notices which has been furnished you for some little time, this cautionary notice has been included, but as it is possible that you may run advertising for which copy was furnished you before this cautionary notice was inserted by us, we will ask you to make certain that it appears in each and every announcement published in your paper from now on.

4766

Under separate cover we are forwarding to you a new electro of the dictionary coupon which includes the cautionary notice, to be substituted for the one now in use. To prevent possible error, we suggest that you deface or destroy the coupon electro previously furnished you which does not include this notice.

Thanking you in advance for giving this matter your very careful attention, and with best wishes, we are,

4767

Yours very truly,

SYNDICATE PUBLISHING COMPANY.
Advertising Dept.

JFJ. RC."

RE-RE-CROSS EXAMINATION by Mr. Hale:

4768

Re-Re-x Q. 248. Was that letter sent to the Post Intelligencer of Seattle on or about the day of its date, April 11th, 1912? A. This is a copy from our files. I have no personal knowledge of the matter.

Re-Re-x Q. 249. Were similar letters sent to other newspapers at or about the same time? A. I have so been informed, but I have not looked up as to dates.

MR. HALE: That is all.

DEPOSITION CLOSED.

(George Henry Doran—Direct.)

4769

Further hearing adjourned to Friday, May 24th, 1912, at 1 o'clock p. m.

NEW YORK, Wednesday, May 29th, 1912.

2 o'clock P. M.

Met pursuant to adjournment noted on page 1139 of this record.

4770

Present—Counsel as before.

GEORGE HENRY DORAN, a witness called by and on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Give your full name, age, residence and occupation. A. George Henry Doran; age, 42; my present residence is the Aberdeen Hotel; I am a publisher.

4771

Q. 2. What is your experience in the book trade, length of time and character of experience? A. Twenty-eight years, and general experience in retail, wholesale, publisher.

Q. 3. Have you had any particular experience in the sale of dictionaries? A. Yes.

Q. 4. Will you specify more particularly what that experience has been? A. In the retailing and wholesaling of various kinds of dictionaries.

Q. 5. What is your present business connection? A. President of George H. Doran Company, 38 West 32nd Street.

4772

Q. 6. Have you from time to time handled Webster's dictionaries? A. Yes.

Q. 7. What was the first Webster dictionary that you remember handling? A. The small edi-

4773

(George Henry Doran—Direct.)

tions of Ward, Lock & Company of London.

Q. 8. At about what date were you handling these dictionaries? A. From 1885 to 1890.

Q. 9. Did you sell them in large quantities? A. Yes, very considerable quantities.

Q. 10. Could you give any approximate estimate as to the amount? A. I don't think I could, but certainly hundreds.

4774

Q. 11. Did you then handle any other Webster's dictionaries after that? A. Yes, handled various editions of Webster. I know there was one in particular we handled from Brock & Rankin, Chicago. We did a great deal of business together.

4775

MR. HALE: I object to the statement that the witness has handled books, unless the names of the books referred to by the witness are specifically given; otherwise the testimony is too general to be of value or even to be tested by cross examination.

Q. 12. At about what date did you have your largest dealings in the Brock & Rankin books?

MR. HALE: Objected to, unless the book referred to as Brock & Rankin book is specified by name; otherwise it is apparently irrelevant and immaterial.

4776

A. I should say in the neighborhood of nineteen hundred.

Q. 13. Can you remember any more particularly the title of that Webster's dictionary? A. My recollection of it is that it just had the words "Webster's dictionary" across the front and on the back bone.

Q. 14. If some one came in to you and asked for

(George Henry Doran—Direct.)

4777

a Webster's dictionary, would you know what book they meant?

MR. HALE: Objected to as irrelevant and immaterial, and because no foundation has been laid, and the witness has not yet been qualified as an expert on that subject.

A. They would mean any dictionary bearing the name "Webster's."

4778

Q. 15. What would you do under the circumstances? A. I would offer them the book in which I was most interested at their price.

Q. 16. Would you ask them anything? A. No, other than as to their price limit.

Q. 17. From your experience in the book trade, are you able to state whether or not the general public ever thinks of the publisher of a dictionary which they are about to purchase?

MR. HALE: Objected to unless the witness' qualifying experience is also called for and stated. 4779

A. I would say not.

Q. 18. From your experience in handling Webster's dictionaries, are you able to state whether or not the general public understands by the name "Webster" on a dictionary a dictionary gotten out by any particular publisher?

MR. HALE: Same objection. 4780

A. I would say not.

Q. 19. From your experience in the book trade are you able to state, and if so, will you state, whether the general public know of any so-called series of revised editions of Webster's dictionaries gotten out by any one publisher? A. I don't

4781

(George Henry Doran—Direct.)

think the general public would have any such knowledge.

Q. 20. From your experience in the book trade, will you state on whose work the general public consider that the value and authority if any which is connected with Webster's dictionaries to-day depends?

4782

MR. HALE: Objected to as calling for a conclusion of the witness without laying any foundation therefor.

A. I should think that they depend upon the original author of that, the same as they would on text books of anatomy which carry the original author's name.

4783

Q. 21. From your experience in the book trade, will you state what the name "Webster" means to the general public? A. I would say they use it interchangeably for and synonymous with a dictionary.

Q. 22. Will you name any publishers of Webster's dictionaries with which you happen to be acquainted in addition to those you have testified you have dealt in?

4784

MR. HALE: Objected to unless the witness will include the names of the dictionaries published by these publishers respectively.

A. There was the dictionary published by Ogilvie and later by Saalfield Publishing Company, G. & C. Merriam Company, Cupples & Leon, and George M. Hill Company. That is as far as my recollection serves me.

MR. CARROLL: That is all, Mr. Doran.

(George Henry Doran—Cross.)

4785

CROSS EXAMINATION by Mr. Hale:

x Q. 23. Mr. Doran, how long has the firm of George H. Doran Company been in business? A. George H. Doran Company, four years.

x Q. 24. And during that period, what has been their business? A. General publishing.

x Q. 25. Has that concern published or sold dictionaries? A. No.

x Q. 26. And you have not published or sold dictionaries during the period of your connection with that company? A. No. 4786

x Q. 27. During the period of what connection did you sell dictionaries? A. I was connected with Fleming H. Revell Company at Chicago.

x Q. 28. What was the business of that concern? A. Publishers and general retailers and jobbers of some lines.

x Q. 29. The fifteen years which you spent with that concern were the years immediately preceding the four years which you spent with George H. Doran Company? A. Not immediately, no; two years elapsed. 4787

x Q. 30. Two years between? A. Yes.

x Q. 31. Did Fleming H. Revell Company publish or sell dictionaries? A. They sold dictionaries.

x Q. 32. They did not publish any? A. They did not publish any.

x Q. 33. Did they sell Webster's dictionaries? A. Yes. 4788

x Q. 34. From whom did they obtain their stock of Webster's dictionaries? A. From Brock & Rankin. I think they bought some from George M. Hill Company; then they bought from jobbers or other dealers the Webster's dictionaries published by G. & C. Merriam.

4789

(George Henry Doran—Cross.)

x Q. 35. What was the nature of the dictionaries purchased from George M. Hill Company that you have referred to? A. It was a Webster's dictionary in the usual sheet binding.

x Q. 36. You mean it was a large unabridged dictionary? A. I don't care to use the word "unabridged." It was a large dictionary, a large Webster's dictionary.

4790

x Q. 37. Was it a reprint of any Webster's dictionary upon which the copyright has expired, or did it purport to be so? A. It purported to be a reprint of a dictionary of which the copyright had expired.

x Q. 38. Do you know of any dictionaries published by George M. Hill Company that were not of that character? A. May I add to my others the Laird & Lee Vest Pocket Dictionaries, and I think we bought the George M. Hill's Vest Pocket, but I am not sure.

4791

MR. CARROLL: Witness adds this statement to his answer to previous question regarding Webster's dictionaries which he has known but not dealt in.

THE WITNESS: I overlooked the small Webster's.

x Q. 39. By the small Webster's, do you mean the Vest Pocket Webster's which you have just mentioned? A. Yes.

4792

x Q. 40. What was the name of the book which you have referred to as the Brock & Rankin book? A. Webster's dictionary.

x Q. 41. What was the size and character of that book? A. It was a large quarto bound in imitation sheep.

x Q. 42. Was that one of the so-called un-

(George Henry Doran—Cross.)

4793

abridged dictionaries upon which the copyright had expired? A. I presume it was.

x Q. 43. In what lines of trade was that book distributed or most largely sold? A. The general retail trade.

x Q. 44. Your concern did not sell it to purchasers but to the trade? A. We sold it to the purchasers, to the consumer.

x Q. 45. To the consumer; that is what I mean? A. Regular retail store business.

4794

x Q. 46. You have referred to certain editions of Ward, Lock & Company of England. What is the name of those books? A. Webster's dictionary.

x Q. 47. What was the size and character of them? A. Various editions, from a small pocket edition to what is known in the trade as a Crown Octavo.

x Q. 48. Were these copyrighted books? A. No.

4795

x Q. 49. Were they imported from England? A. Yes.

x Q. 50. By whom? A. I could not say exactly by whom.

x Q. 51. They were all alike without distinction called simply Webster's dictionary? A. As my recollection serves me.

x Q. 52. How long since you have seen a copy of any of them? A. That I could not state, but I know they are still catalogued.

4796

x Q. 53. Catalogued where? A. In the English catalogues.

x Q. 54. How about the American catalogues? A. I don't know.

x Q. 55. What about the publishers' trade list annuals? A. That I don't know.

(George Henry Doran—Cross.)

4797

x Q. 56. How long since you have seen a copy in this country? A. That I don't know.

x Q. 57. Can you and will you produce a copy of those books at this examination? A. No.

x Q. 58. What connection was there between these English books and any book written by Noah Webster or any other Webster's dictionary of which you have ever heard? A. I don't know.

4798

x Q. 59. Do you know whether or not they were English reprints of American Webster dictionaries? A. I never investigated.

x Q. 60. Do you know the date of their publication? A. No.

x Q. 61. How many of such books were sold by your concern to your knowledge? A. I could not say.

x Q. 62. How long were they on sale in your concern to your knowledge? A. That I could not say.

4799

x Q. 63. What was the price at which the Brock & Rankin book was retailed? A. From \$3.00 down.

x Q. 64. What were the prices of the Ward & Lock Company books? A. From twenty-five cents to \$1.25, if my recollection serves me.

x Q. 65. What were the prices of the Laird & Lee books? A. Twenty-five and fifty cents, vest pocket books.

4800

x Q. 66. Do you know whether or not Laird & Lee are involved in litigation with the Merriam Company over the use of their name Webster in connection with their dictionaries? A. I do not.

x Q. 67. Have you ever heard of such litigation? A. No.

x Q. 68. Have you ever personally sold dictionaries at retail to customers? A. Yes.

(George Henry Doran—Cross.)

x Q. 69. Over how long a period? A. Intermittently for ten years.

x Q. 70. And during that period, was that a regular part of your business? A. General supervision of retail stores, yes.

x Q. 71. Yours was a supervisory position though, and the sales were only occasional that were made personally by you? A. They would be occasional.

x Q. 72. Is it within your experience that customers do come into book stores and ask for a large or a small Webster's dictionary? A. Yes.

x Q. 73. And has it sometimes happened, upon such occasions that you had Webster dictionaries of the Merriam Company in stock, and also dictionaries bearing the name "Webster" not published by the Merriam Company? A. Yes.

x Q. 74. How did you handle the situation under those circumstances when a customer inquired for a Webster dictionary? A. The price limit governed very largely.

x Q. 75. Do you mean that you would show and sell the dictionary most nearly approximate in price to the price stated by the customers? A. The procedure would be something like this—

x Q. 76. Please state the procedure? A. A customer would come in and say, "I want a dictionary, a Webster dictionary." "About what price would you like to pay?" And we could come as near furnishing a book of the price as we could.

x Q. 77. And your concern never made any distinction between Webster dictionaries of the Merriam Company and dictionaries published by other publishers under the name of Webster? A. Not to the general casual public buying a dictionary.

4801

4802

4803

4804

4805

(George Henry Doran—Cross.)

x Q. 78. Do you in any other way make any distinction? A. I do not recall any particular distinction.

x Q. 79. You have stated that in your opinion the average customer calling for and purchasing a Webster dictionary does not have in mind the publisher of that dictionary; is that correct? A. Yes.

4806

x Q. 80. Just what do you mean by that answer? A. I will parallel it by a case of a person coming in and saying, "I want a Cruden's Concordance." A Cruden's Concordance can be had in all editions, many editions, and many prices by many publishers. They serve precisely the same purpose, which you know is a word index to the Bible, all based on the work of Alexander Cruden.

4807

x Q. 81. You mean, then, that they have in mind the work and not the name of the person who produced the work; that is, who manufactured it or published it. A. The basic work, yes.

x Q. 82. What do you mean by "basic work"? A. Alexander Cruden produced a concordance, and it was abridged and modified and is still known to the trade as Cruden, known to the consumer as Cruden.

4808

x Q. 83. You have also stated that in your opinion the public do not have in mind any particular publisher in connection with Webster's dictionary. Just what do you mean by that? A. Just what I said.

x Q. 84. Do you mean that they do not know the name of the publisher of Webster's dictionary? A. The general public, I do not think, distinguish between the names of various publishers of Webster's dictionary.

x Q. 85. You mean they do not know the name

(George Henry Doran—Cross.)

4809

of the publishers of any Webster's dictionary?

A. I don't think they do.

x Q. 86. You are speaking, of course, now of the average and general buyer? A. I am speaking now of the casual buyer of the dictionary.

x Q. 87. Upon what do you base that information and belief? A. Experience, not alone with dictionaries, but with other books.

x Q. 88. From that experience, what is the attitude of mind of the ordinary purchaser, not only of dictionaries, but of other books to which you have referred? A. I think indifference, looking for the article to suit their pocketbook.

4810

x Q. 89. You have spoken of a Cupples & Leon dictionary which uses the name "Webster." Have you ever handled that book in the course of trade? A. Only in a few single copy instances.

x Q. 90. Do you know anything about the extent of its circulation and sales? A. One copy for my own daughter and one copy for my own secretary. I know it has had a large sale.

4811

x Q. 91. How do you know that? A. By general trade knowledge.

x Q. 92. When did you buy the two copies referred to? A. About three years ago.

x Q. 93. From whom? A. Cupples & Leon.

x Q. 94. Direct? A. Direct.

x Q. 95. Have you ever been associated in business in any way with Cupples & Leon or any member of that concern? A. Never.

4812

x Q. 96. Do you know what connection there is between the Cupples & Leon Company's book and any other Webster's dictionary? A. No.

x Q. 97. You do not know whether there is any connection at all or not? A. No, I do not.

x Q. 98. Are you acquainted with a man by the

4813

(George Henry Doran—Cross.)

name of Roe who is mentioned on the title page of the Cupples & Leon Company book? A. No.

x Q. 99. You have stated that in your opinion the word "Webster" is synonymous with dictionaries to the average purchaser. What are the specific reasons for that opinion on your part? A. Why, it is almost native.

4814

x Q. 100. I don't quite understand that. Can you be fuller? A. I don't see how I could. I can just give my own attitude toward a dictionary. If anybody would say to me, "Just go and look up Webster," I would go and look up any dictionary that comes to be near by.

x Q. 101. Is that a common phrase, "Go and look up Webster"? A. I don't know.

x Q. 102. Can you make any further or better answer as to the grounds of your belief in that regard? A. No, I don't think I could.

4815

x Q. 103. Have you ever handled any of the dictionaries published by Ogilvie or his successor, Saalfeld? A. I would not like to say positively.

x Q. 104. Do you know the names of those dictionaries? A. Not in detail.

x Q. 105. Do you know that some of them are published under several names, the same or substantially the same identical book? A. No.

x Q. 106. You don't know that? A. No.

4816

x Q. 107. Do you know that a number of the dictionaries using the name "Webster" which have been in the market in recent years are the same identical dictionary printed from the same plates or duplicates by different publishers and under different names? A. That might well be.

x Q. 108. You know that is a fact to some extent? A. I would not say it is a fact, no.

x Q. 109. What is your best information and

(George Henry Doran—Cross.)

4817

belief upon that subject? A. I don't think it was ever specifically drawn to my attention, that the same plates were used by more than one publisher.

x Q. 110. Well, how about the same literary matter?

MR. CARROLL: I object to all this line of testimony as improper cross examination, having no relation whatever to the direct examination, and further, as being irrelevant and immaterial.

4818

A. I should say that they are all based on the original work of Noah Webster.

x Q. 111. That is not the present point. The present point is as to whether or not a number of these so-called Webster dictionaries with slightly varying titles and with different publishers' names in their imprints are not the same literary composition?

4819

MR. CARROLL: Same objection.

A. I don't know.

x Q. 112. What is your best information and belief upon that subject? A. I have none.

x Q. 113. Upon what did you base your answer that the conditions suggested might well be? A. On other books of reference.

x Q. 114. You do not know to what extent if at all any of these various dictionaries which you have referred to are identical with any copy of a dictionary written by Noah Webster or published or copyrighted by the Merriam Company at any time?

4820

MR. CARROLL: Same objection.

4821

(George Henry Doran—Cross.)

A. My general answer would be that a Webster's dictionary is a Webster's dictionary, and presumably they are all based on the original work.

x Q. 115. And that is all you know about that?

A. As far as I would say, yes.

x Q. 116. What is the basis for the presumption which you state? A. I think that Cruden's Concordance is the best analogy I can give you about that.

4822

x Q. 117. In other words, because it is a fact in connection with one work with which you are acquainted, you presume it is also the fact with reference to these Webster dictionaries? A. I think it is the fact and practise in connection with many books of reference based on an original work of many years.

4823

x Q. 118. What is the practice to which you refer in your last answer? A. I answered your question before, that presumably they do use the same plates and the same matter worked over in different ways.

x Q. 119. Are you the George H. Doran who made a voluntary affidavit on behalf of the Syndicate Publishing Company in the pending case for use upon the motion for a preliminary injunction?

A. May I look at it? (Witness examines affidavit) Yes.

4824

DEPOSITION CLOSED.

(Oath and SIGNATURE WAIVED by Consent.)

MR. HALE: All of the testimony of this witness as to the use of the name "Webster" upon or in connection with dictionaries not actually produced is objected to as incompetent, irrelevant

(*Robert E. Sherwood—Direct.*)

4825

and immaterial, because secondary, and motion is made to strike it out unless the books referred to are produced before the final hearing herein.

(Further hearing adjourned to Saturday, June 1st, 1912, at 11 A. M.)

NEW YORK, SATURDAY, June 1st, 1912.
11 A. M.

4826

Met pursuant to adjournment.

Present: Counsel as before.

ROBERT E. SHERWOOD, a witness called by and on behalf of the defendants, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

4827

Q. 1. Give your full name, age, residence and occupation? A. Robert E. Sherwood, age, 48; business address, 144 Fulton Street, New York; residence, 281 Rugby Road, Brooklyn, occupation, a book seller.

Q. 2. How many years have you been engaged in the book business? A. Upwards of twenty years.

Q. 3. What has been your general experience in the book business? A. General lines such as are handled by up-to-date retail stores. 4828

Q. 4. Have you personally sold books over the counter? A. I have acted as salesman in my own place of business for a number of years.

Q. 5. During that experience have you sold dictionaries of various kinds? A. Yes.

Q. 6. Among others, Webster's dictionaries? A. I have.

4829

(Robert E. Sherwood—Direct.)

Q. 7. To what extent have you sold Webster's dictionaries? A. In addition to carrying on a large trade in Webster's dictionaries in a regular retail way, I have also sold, as professional book auctioneer, large quantities of books, belonging to estates, in which dictionaries from time to time occurred.

4830

Q. 8. At present have you your own book store?
A. 144 Fulton Street.

Q. 9. What varieties of Webster's dictionaries have you dealt in? A. Many varieties, comprising possibly fifty different kinds, running in size from the small vest pocket dictionary, containing, possibly, one hundred pages, to the large quarto dictionaries, containing approximately over two thousand pages.

4831

Q. 10. Will you name all the Webster's dictionaries which you have dealt in, or known about, giving as nearly as you can their complete details and their publishers?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and because calling for secondary evidence of the witness of printed books which are not produced, and which may easily be produced if there are any such.

4832

A. Speaking from memory entirely, not having the books before me, I will endeavor to recall the details as best I can, commencing with the larger ones, and going down to the smaller ones published.

Webster's New Unabridged Dictionary, published formerly by Thompson & Thomas of Chicago, but now published by the Charles C. Thomas Company; the Webster Encyclopedic

(Robert E. Sherwood—Direct.)

4833

Dictionary, published by the Saalfeld Publishing Company of Akron, Ohio; School and Office Dictionary, published by Charles C. Thomas Company; Webster's Family Dictionary, published by Laird & Lee, of Chicago; the Pocket Dictionary, published by Hurst & Company; the Common Sense Dictionary, published by Miles & Company, Lancaster, Pennsylvania; the Webster Vest Pocket Dictionary, published by Charles C. Thomas & Company of Chicago; Webster's Vest Pocket Dictionary published by David McKay of Philadelphia, and there are approximately, to the best of my knowledge and recollection, twenty-five or thirty other Webster's dictionaries of various titles and sizes, which I now have or sold and on exhibition in my place of business, the exact details of which I cannot now call to mind.

4834

Q. 11. Have you either in your regular business, or in connection with your auction business, sold any copies of Webster's dictionaries, which were published prior to 1850? A. Yes.

4835

Q. 12. Can you remember the titles? A. Yes.

Q. 13. Give us as far as possible the description of those dictionaries? A. Some three or four months ago, while conducting an action sale by catalogue for the George G. Richmond Literature Company of 19 East 45th Street, New York City, I offered for sale, and did sell, a copy of a dictionary, the exact title of which I remember was, "Webster's New Dictionary," the imprint of which on the title page was "London, 1818."

4836

MR. HALE: So much of the answer as tells in part the contents of the book referred to is objected to as secondary.

Q. 14. Have you come in contact with custo-

4837

(Robert E. Sherwood—Direct.)

mers themselves in selling Webster's dictionaries? A. I have.

4838

Q. 15. Will you outline the usual conversation which takes place between a customer and you when the customer comes to buy dictionaries? A. There is no regular prescribed conversation usually occurring, but my experience has been that the customer is generally more interested in acquiring knowledge as to whether or not the dictionary is up to date, than he is in its mechanical construction or its publisher. When a customer applies in our store we have a certain space set apart for exhibition and sale of dictionaries in general, whether they are all of the English language or whether they are of foreign languages. On application of the customer for the purchase of a dictionary, he is generally taken to that portion of the store, and a preliminary conversation engaged in to bring out the kind of a dictionary he wants to buy, as to size, binding and the price that he would like to pay, and the usual conversation engaged in as generally occurs between a salesman and customer, and the general questions asked by the customer are to the effect, "Is the book up-to-date?" and sometimes, "How many words are defined in the copy which you show me?"

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Q. 16. What have you understood the customers to mean by the requirement that the book should be up-to-date? A. That the plates should be so revised that all the words that have been coined in recent years shall be incorporated into the book, and the definition given.

Q. 17. As far as you can recall, did any customer ever bring back a Webster's dictionary, complaining it was not published by any particular publisher?

(Robert E. Sherwood—Direct.)

4841

MR. HALE: I object to that as irrelevant and immaterial.

A. Not to my knowledge.

Q. 18. As far as you can remember, did any customer ever ask for a particular imprint of any publisher? A. I never knew of a customer to ask for a Webster's dictionary by the imprint; they generally ask for it by the title, if they ask for it in any specific way at all.

4842

Q. 19. Has it been your experience that the ordinary buyer of Webster's dictionaries thinks about the publisher at all?

MR. HALE: Objected to as calling for what the public thinks, instead of what they say.

A. Well, as a matter of fact,—the question—

Q. 20. (Question repeated by the stenographer.) Has it been your experience that the ordinary buyer of Webster's dictionaries thinks about the publisher at all? A. He generally inquires as to the mechanism of the book, and the number of words defined, and, as I have said before, whether or not it is up to date.

4843

Q. 21. Would you regard a large unabridged Webster's dictionary as in competition with a small dictionary like the New Illustrated? A. No, I would not, excepting in so far as the elementary words are concerned, both having elementary words in, but dictionaries, if I may be allowed to elaborate, are bought according to the demands made upon them by the customer. If a man is a professional man, lawyer, public speaker, he will of necessity require a dictionary which is fully complete in every particular; if, on the other

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(Robert E. Sherwood—Direct.)

hand, the dictionary is to be used for elementary school work, the dictionary not so elaborate will suffice, so I should say it depends altogether on the use to which the respective customers expect to put it.

4846

Q. 22. Are there any particular marks, as to binding and so on, by which it would be possible to distinguish dictionaries published by different publishers?

MR. HALE: Objected to unless the witness will include in his answer the reasons and grounds of his opinion.

4847

A. There are certain ways. Many of the publishers have an outside stamp, consisting of a die, on which is stamped their name, and sometimes their business address, on the outside cover; nearly all of the larger dictionaries are so stamped; the smaller dictionaries, I don't recall there being any specific stamp.

Q. 23. Aside from such markings as you have just indicated, is there any method of distinguishing from the outside, dictionaries published by different publishers? A. Excepting where the title differs, as many dictionaries published have a qualifying adjective in the title which sometimes specifies or indicates the dictionaries being sold.

4848

Q. 24. As to the general style and binding of dictionaries, can it be said that they are uniform in general, no matter by whom published? A. Well, binding as an art must of necessity be somewhat similar, in all cases where leather was used, and in all cases where colors are used the only difference being the cloth bindings, where the coloring of the cloth is different. If I may go further, I may say sheepskin is generally of the

(Robert E. Sherwood—Direct.)

4849

same color, Russians are of the same color in the leathers, but the colors and styles are generally diversified in the cloth colors, because the dies give the binder a chance to make the colors widely diversified.

Q. 25. Would it be possible that any purchaser could in any way be deceived as to the origin of the book or publisher by the general binding or make-up of a dictionary? A. The general appearance is not identified with any particular publisher; the only way to arrive, outside of the die stamp which I have already testified to, would be to open the book to the title page, and find the imprint.

4850

Q. 26. From your experience in the book trade, will you state whether or not the name "Webster's" as applied to dictionaries, indicates to the public generally anything about the source of publication?

4851

MR. HALE: I object to this as calling for a conclusion of the witness and too broad.

A. It does not.

Q. 27. From your experience in the book trade, will you state whether or not the general public know the name of the publisher or publishers of any Webster's dictionaries. A. I cannot say as to what their knowledge may be unexpressed, but I have never had them express such a knowledge to me.

4852

Q. 28. Have you ever, in your experience in the book trade, had a customer indicate in any way a conception of Webster's dictionaries as a series gotten out by any one publisher?

MR. HALE: Objected to.

(Robert E. Sherwood—Direct.)

4853

A. I have not.

Q. 29. Have you during your business experience had occasion to follow the general course of advertising by various publishers in connection with Webster's dictionaries? A. In a general way, particularly where it affected the local conditions and the demands.

4854

Q. 30. Has your observation been complete enough for you to state approximately the proportion of the advertising which has been in the name of the G. & C. Merriam Company, to that in the name of other publishers of Webster's dictionaries?

MR. HALE: Objected to as calling for a mere guess and surmise of the witness, and without laying any foundation in the knowledge of the witness of definite facts sufficient to make an estimate of any reliability.

4855

A. As a matter of fact, the G. & C. Merriam Company publish but one or two varieties of dictionaries, while the balance of the publishers co-jointly publish hundreds of various Webster's dictionaries, all of which they advertise in a great many directions. I should say that a conservative estimate of the ratio would place it at about five to one in favor of the numerous publishers, possibly greater than that.

4856

MR. HALE: The answer is objected to as being frankly a mere guess, and motion is made to strike it out.

Q. 31. Do you mean to say then that during your experience in the book business, during which you have stated that you have observed the various advertising of Webster's dictionaries,

(Robert E. Sherwood—Direct.)

4857

other publishers than the G. & C. Merriam Company have devoted at least five times as much to the name "Webster's" as the G. & C. Merriam themselves have done? A. I place it that way.

MR. HALE: Same objection to the question and answer.

Q. 32. I show you Defendant's Exhibit 1, being a Webster's unabridged dictionary published for the trade, with the G. & C. Merriam Company's trademark, consisting of the monogram "N. W.," the wreath and the circle appearing on the outside of the cover; have you ever dealt in dictionaries of that kind (showing book to witness)? A. I have. 4858

Q. 33. Have you ever had any conversation with a representative of the G. & C. Merriam Company in connection with one of such dictionaries? A. I have.

Q. 34. What was the occasion of that conversation? A. About seven years ago, possibly longer, in my place of business at 144 Fulton Street, I was approached by a salesman for the G. & C. Merriam Company, whose name I do not now recollect, and don't really believe I knew at the time, but did have knowledge that he was the authorized salesman for the concern, to buy a quantity from him of the exhibit referred to in question. I said to him— 4859

Q. 35. What was said by you and what was said by him on that occasion? 4860

MR. HALE: Objected to as irrelevant, incompetent and immaterial to any issue in this case.

A. I said to him, "Why should I pay you a

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(Robert E. Sherwood—Direct.)

4862

greater figure for that book when I can buy one just as good mechanically and from a literary standpoint as the one which you now show me," and I said, "They are all of them more or less built on the edition of 1847," and he said, "Yes, but this book has many more additions made with the 1847 plate, or new words, than the other books which you mentioned contain," and in a joking way I said to him, "Do you mean to tell me that every one of the plates in the book you now show me and exhibit for sale are new plates?" "Oh," he said, "there may be occasions where the same plate in this book is the same as in the 1847 plate, if there are no words coming into usage since the 1847 edition was printed, which would of course of necessity be the plate remaining the same." Our negotiations were closed without any sale being effected.

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MR. HALE: Complainant's counsel inquires if the purpose of this line of examination is to establish the alleged fact that the exhibit shown the witness is printed in whole or in part from any plates of the 1847 edition of Webster's dictionary, or duplicates thereof. If so, complainant's counsel objects to this question and this answer and this line of examination, upon the ground that the testimony is incompetent, being merely a hearsay declaration of an unknown person, not shown to be authorized to speak for the complainant, and is not the best evidence, because the books themselves are the best evidence, and a comparison of them will show the real fact without any guess or doubt about it.

(Robert E. Sherwood—Direct.)

4865

Q. 36. What reason had you to believe that the man with whom you held the conversation you have just outlined was the duly authorized representative of the G. & C. Merriam Company?

A. By presentation of a card bearing the firm name, but down in the left hand corner, "Represented" by the gentleman whose name I cannot now recollect. It has been many years ago, I cannot recall it to memory now.

Q. 37. Had you ever seen him before? A. Yes, a number of times; would know him again if I saw him.

4866

Q. 38. And each time he came with the G. & C. Merriam Company's card? A. No, I cannot testify to that, but on this specific occasion, he presented a card; he is a gentleman with whom I had business dealings before in connection with the same firm, and I took it that he was still connected with them.

Q. 39. Did you ever buy any books from the G. & C. Merriam Company through that man? A. Not direct through him. I have bought several dictionaries by mail, but I don't recall that I ever gave their commercial representative an order. I may have, but if I have, it does not occur to me now.

4867

Q. 40. Did you ever sell books like this exhibit? A. Many thousands of them.

Q. 41. From whom did you obtain those books? A. H. B. Claffin & Company, whom, I understand, obtained them from Reilly & Britton Company of Chicago.

4868

Q. 41. By whom were those books printed? A. The only evidence I have by whom they were printed, from which one might suppose to be the truth, was the copyrighted imprint of the G. & C.

869

(Robert E. Sherwood—Direct.)

Merriam Company on the inside of the second page. The actual imprint in the plate generally reserved by publishers for putting their name and address, these words appeared: "Printed for the trade."

Q. 42. "Published for the trade"? A. I am not sure. (Consulting book) "Published for the trade."

4870

Q. 43. At what price did these dictionaries sell? A. We paid one dollar and sixty-five for them f. o. b. our store.

Q. 44. What did you sell them for? A. We used to make a leader of them sometimes at one dollar and ninety-eight, but the usual retail price was two dollars and twenty-five cents.

4871

Q. 45. During your professional career as an auctioneer, you have stated that you sold many varieties of Webster's dictionaries; have you in each instance prepared a catalogue accurately describing those dictionaries for the sale? A. In a great many sales I have, but the custom was not rigidly adhered to. In cases of estates where the estates were offered in liquidation, a catalogue was always published as a matter of law, but in cases where general auction sales were had, comprising duplicate volumes, a catalogue was rarely used.

4872

Q. 46. In those catalogues the Webster's dictionaries disposed of were fully described? A. In the disposition of the estates they were usually in catalogues, and goods offered, including Webster's dictionaries were fully described, their binding, their size, their contents and in general a reproduction of the title page, including the publisher's name and address.

Q. 47. Has it been your experience that Web-

(Robert E. Sherwood—Direct.)

4873

ster's dictionaries published by one publisher or by another, have brought better prices at the auction block? A. I have never known any instance where a Webster's dictionary brought a greater or less price on account of its publishers's imprint. The condition which brings out the price is generally affected as to the mechanical construction and the date of the book, the publisher, one or another, not affecting its retail price.

4874

Q. 48. Given two books then of the same mechanical construction, and bearing approximately the same dates, can you state from your experience whether or not those two books have brought approximately the same price, irrespective of the publisher? A. All other conditions being equal, excepting those you have stated, I would say they would bring about the same price.

CROSS EXAMINATION by Mr. Hale:

4875

x Q. 49. In these catalogues, of the description of books to which you have referred, just above, did you include also the date of edition of the various books? A. Yes, where a date was mentioned in the book the date was always given, but when no date was given in the book, the words "N. D." appear, which means no date.

x Q. 50. Has it ever occurred in your experience that intending purchasers have come to your store and asked for a Webster's dictionary? A. Yes.

4876

x Q. 51. Please describe the ordinary course of procedure after the customer has made such an inquiry? A. I think I have pretty generally described it in the previous answer, but, as I said, our custom is to have all dictionaries classified and put into one portion of the store, and when

4877

(Robert E. Sherwood—Cross.)

4878

the customer approaches and makes known his desire to purchase a Webster's dictionary, for the sake of convenience, so we may be able to show him all the different kinds we have in stock, he is taken to this certain portion of the store set apart for that purpose, and, as I have said before, the conversation that generally ensues tends to bring out the kind and style and size and price he desires to pay, this being arrived at by elimination that generally effects the sale in proportion to the customer's desire.

x Q. 52. Have you always carried in your dictionary stock Webster's dictionaries published by the Merriam Company, as well as dictionaries published by other publishers to which you have testified? A. I could not testify as to whether we have had them all the time, but about as long as this.

4879

x Q. 53. That would cover the last twenty years? A. Yes.

x Q. 54. Do you always explain to such customers, the difference between Webster's dictionaries published by the G. & C. Merriam Company and dictionaries published by other publishers upon such inquiry? A. I have never regarded them different in regard to their contents.

4880

x Q. 55. As a general rule, you do not make any such explanation? A. No, they do not ask for elucidation on that point.

x Q. 56. You show him your entire stock and practically allow him to select for himself the book that in get-up and price seems to most nearly approximate the idea had in mind? A. That is my general rule, unless I know beforehand from the purchaser that he desires to purchase a book of a certain size, in which case the general line

(*Robert E. Sherwood—Cross.*)

4881

is not shown, merely the books of that size which he indicates he desires to purchase.

x Q. 57. Have you ever explained to such customers that the G. & C. Merriam Company is the original or long established publisher of Webster's dictionaries? A. Not unless requested to by the purchaser.

x Q. 58. You know, do you not, that the literary contents of the most recent and copyrighted Webster's dictionaries of the G. & C. Merriam Company are largely different from the literary contents of all so-called Webster's dictionaries by other publishers, do you not? A. I do not, where they are the same size, I think there is very little,—speaking from experience and examination—between the two. As a matter of fact, my experience has taught me that no one publication of Webster's dictionaries, or otherwise, has every word in use in the English language today; some are lacking on one point, while others supply it, and vice versa.

4882

4883

x Q. 59. You have spoken of a conversation with an unnamed person whom you have described as an agent of the Merriam Company, in regard to the book, a copy of which is in evidence in this case, marked Defendant's Exhibit 1; what else did that agent say to you along the same line; A. My recollection is that I did not describe him as an agent, but as a representative. The evidence which I have given in relation to the gentleman referred to was in substance about all that occurred between us at that time.

4884

x Q. 60. Do you mean to say this agent did not call your attention to the fact that the main vocabulary of this dictionary was the unabridged edition of 1864, prepared by Noah Porter, and not a reprint in whole or in part of the 1847 edition?

4885

(Robert E. Sherwood—Cross.)

A. Not to my recollection, in fact in a joking way between us, quite the reverse was the gist of the conversation.

x Q. 61. Did you at that time know the main vocabulary was in fact a reprint of the 1864 edition of Noah Porter, as added to in the subsequent editions? A. I had no knowledge of the fact.

4886

x Q. 62. Did you have any information or belief on that fact at that time? A. No, I cannot say that I did, and to be truthful about it, I inferred knowledge, but nothing was ever stated to me specifically.

x Q. 63. What was your inferred knowledge at that time? A. I cannot say specifically I had any knowledge at my command which I could testify truthfully as to what edition it was.

4887

x Q. 64. Had you any knowledge, information or belief in regard to this book before this alleged conversation with the agent? A. I had seen it and handled it, but not read it.

x Q. 65. You knew, as a matter of fact, did you not, that this agent was trying to sell you a stock of the 1864 edition, as revised and amended, and not trying to sell you a reprint of the 1847 edition? A. I have no knowledge that would lead me to testify on that as being a fact.

4888

x Q. 66. Did you at that time know of any distinction or difference between the 1847 edition and the 1864 edition? A. It was all our supposition—that the dictionaries which were offered under the title of 'Webster's Unabridged Dictionary' were based on the edition published under the authorship of Noah Webster in 1847, with additions thereto, and corrections, contingent on the new words which have been coined since the original edition was published in 1847.

(Robert E. Sherwood—Cross.)

4889

x Q. 67. As a book man, you knew, did you not, of the 1864 edition prepared by Dr. Noah Porter? A. I did.

x Q. 68. You also knew, did you not, that this book was the book which figured in the controversy with Worcester's dictionary some forty or fifty years ago; I mean a controversy in the public press and other pamphlets, etc.? A. The pamphlets and the controversy never came under my notice, neither by hearsay nor otherwise, and as before my birth, I cannot testify on that point.

4890

x Q. 69. Was a copy of this book present at that interview with this representative? A. It was not.

x Q. 70. Had you at that time seen a copy of it? A. I had.

x Q. 71. Did you notice the several copyright notices upon the back of the title page, dated respectively 1864, 1879, 1892 and 1903? A. I had knowledge that such dates as specified were imprinted thereon, but did not see them at the time, and what time I did, I cannot now testify.

4891

x Q. 72. Did this agent call your attention to this copyright notice and the change *prima facie* indicated thereby? A. He did not, because there was no exhibit of the book made.

x Q. 73. Did this agent refer to the fact that this book, Defendant's Exhibit 1, has a supplement of more than five thousand words and phrases added to the printed edition of Webster's Unabridged Dictionary? A. He did, and it was for that reason I asked him specifically in addition to those five thousand words if some of the same plates were not in the book of which we were talking, which were in the 1847 plate, and he said, as I have testified before, where there

4892

4893

(Robert E. Sherwood—Cross.)

were no words to be added to that one plate, probably it remained as it was in 1847.

x Q. 74. Can you specify a single page in that volume before you which is printed from the same plates as the 1847 edition, or the literary contents which are identical with the 1847 plates?

4894

A. I have no evidence at my command which would enable me to do that, and the only evidence I base my answer on is the representation of the agent himself.

x Q. 75. You don't mean to testify then that there is a single page of this edition of the book which contains the same literary matter contained on any page of the 1847 edition? A. Excepting the suppositions or declarations of the representative.

4895

x Q. 76. You don't yourself offer any testimony of that fact? A. I have no knowledge of it being the fact, excepting the declaration of the representative himself.

x Q. 77. You have referred to a book entitled "Webster's New Unabridged Dictionary" published at one time by Thompson and Thomas. Was that book a reprint of the edition of 1847? A. No.

4896

x Q. 78. What was it? A. The book is really under a different title, printed from the same plates as the one published by the Saalfeld Publishing Company, under the title "Webster's Encyclopedic Dictionary," and is made into two parts under one binding, practically two volumes in one, the first being 1847 plate, the second volume being a supplementary book containing fifty thousand words; there is a definition in archaeology, anatomy, zoology, chemistry, mineralogy and other arts and sciences by the Right Reverend Bishop Fallows of Chicago.

(Robert E. Sherwood—Cross.)

4897

x Q. 79. That supplement to which you have referred by Bishop Fallows was printed under two alphabets? A. The supplement by Bishop Fallows was under an alphabet of its own, and the old edition also under an alphabet of its own, both alphabets being bound in the same book.

x Q. 80. And this list of dictionaries which you have given which used the name "Webster" and which was not published by the Merriams, you have referred to two which are substantially the same book of different publishers and different titles—are there any other instances in that list of the same sort? A. I think practically all the Webster pocket dictionaries of about one hundred pages each, whether they are called by one title or another, are practically printed from the same plates. 4898

x Q. 81. Is not that also true as to two books you have designated as "Webster's School and Office Dictionary," published by Thomas & Company, and "Webster's Common Sense Dictionary," which you have said was published by Miles & Company? A. No, the Miles book is a very small book in comparison to the "School and Office Dictionary." 4899

x Q. 82. Do you know of any other name or publisher under which or by whom the book called "Webster's School and Office Dictionary" has been published? A. I do not. I know there has been some. 4900

x Q. 83. You cannot recall the specific titles? A. No.

x Q. 84. You know it has been published by several publishers under several titles? A. No, it has not; it has never been published by any concern except Thompson & Thomas, but there

4901

(Robert E. Sherwood—Cross.)

had been several different imprints placed in the book called "School and Office Dictionary" purporting to be published by other publishers in precisely the same manner as the imprint published for the trade, as appears in the book marked "Exhibit 1."

4902

x Q. 85. With this change of imprint was there also a change of title upon the outside cover and title page? A. My recollection is there was.

x Q. 86. Do you not also know that this same book was originally published without the name "Webster" under the title of "Baleh Compendium?" A. I have no knowledge as to that.

x Q. 87. Have you any knowledge or belief on that subject? A. No.

4903

x Q. 88. Can you state the full contents of the title page and color and inscription of each and all the dictionaries you have named, or any more fully than you have already done so? A. No, I cannot.

4904

x Q. 89. From your experience, can you say whether or not the ordinary member of the public and the purchaser of dictionaries knows the names of the publishers of the various editions? A. I don't think they do, in my experience, or if they do know, they never evidenced such knowledge in the purchase of them. As I say, the specific point on which they want to be informed is whether or not the book is up to date, but sometimes, although not in all cases, they inquire how many words, definitions and phrases the book contains. That is really the bulk of the conversation between purchaser and salesman.

x Q. 90. And is this what you mean when you testify that the general public, or the average purchaser, does not think about the publisher at all in making his purchase? A. It is, and I think I have already testified to that before.

(*Robert E. Sherwood—Re-Direct.*)

4905

x Q. 91. Do you know of your own knowledge, what, if any relations any of the so-called Webster's dictionaries not published by the Merriam Company bear in literary contents to any dictionary with which Noah Webster had anything to do? A. Generally speaking, their contents are very similar, for the reason the first elementary dictionary that I had any knowledge of was published under the authorship of Noah Webster, and of necessity they would have to be similar, because they are supposed to embrace the definitions of the English words generally. 4906

x Q. 92. Do you know this of your own knowledge and from a comparison of the books themselves? A. I do.

x Q. 93. You have referred to a dictionary entitled "Webster's New Dictionary," of the imprint "London, 1818;" have you a copy of that book in your possession, or can it be obtained for introduction in evidence? A. It was sold in an auction sale of an estate, at which I officiated as the auctioneer. By diligent search of the records of the sale I can no doubt learn the name and address of the person who purchased it, but whether or not it still remains in his possession would be a matter of conjecture. If the original purchaser still has it, I imagine it could be obtained. 4907

MR. HALE: That is all.

4908

RE-DIRECT EXAMINATION by Mr. Carroll:

Re-D. Q. 94. What do you understand the customers to mean by the requirements that the book should be up-to-date? A. That they should contain all the new words brought into usage since the original dictionary was printed.

4909

(Robert E. Sherwood—*Re-Cross.*)

Re-D. Q. 95. Did they expect to embody any changes of the words which were in the original dictionary? A. When the usage has made this change necessary.

Re-D. Q. 96. It would be the fact, would it not, that a great majority of the words in any dictionary would remain unchanged from the original book? A. If they were root words, yes.

4910

Re-D. Q. 97. Fundamentally, then, any most up-to-date Webster's dictionary would be very similar to the original Webster's dictionary?

MR. HALE: Objected to as leading and argumentative, and as calling for a conclusion.

4911

A. Of necessity it would, for the reason in all probability the English language has not increased in new words, more than five or ten thousand, since the original dictionary was printed.

RE-CROSS EXAMINATION by Mr. Hale:

Re-x Q. 98. Answering upon the same information, does not the average purchaser to-day of a dictionary expect the book bought to be accurate in its contents, and in accordance with the best present day usage in the information afforded? A. Undoubtedly.

4912

DEPOSITION CLOSED.

Oath and signature waived by consent.

Adjourned to Saturday, June 8th, 1912.

(*Thomas I. Skeoch—Direct.*)

4913

NEW YORK, Saturday, June 8th, 1912.

Met pursuant to adjournment.

Present: Counsel as before.

THOMAS I. SKEOCH, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

4914

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Give your full name, age, residence and occupation? A. Thomas I. Skeoch, 1027 East 167th Street, salesman for the Syndicate Publishing Company, New York, 12-14 West 32d Street.

Q. 2. Have you been present during part or whole of some of the distributions of the Syndicate Publishing Company's books by the newspapers? A. Yes.

4915

Q. 3. During those distributions have you from time to time questioned various purchasers of the Webster's dictionaries published by the Syndicate Publishing Company? A. Yes, quite considerably.

Q. 4. In approximately how many towns or cities have you carried on this investigation in the last year? A. You mean the sale of the books or the investigation?

Q. 5. The investigation? A. Well, I have not been engaged to make any investigation. I did that for my own information. I have sold the books from Maine to California. I have visited, I think, at least thirty States in the Union with that proposition.

4916

Q. 6. What was the purpose originally of your questioning the purchasers? A. Well, it was for

4917

(Thomas I. Skeoch—Direct.)

my own information principally, to see if the book was appreciated at the price, and principally for the success of the plan. I wanted to determine myself whether the plan we were putting the books out on was a success, whether it was meeting with the approval of the subscribers, success to the newspapers, for my future connection with the concern.

4918

Q. 7. From your investigation of this kind can you state whether or not the ordinary purchasers of one of these dictionaries knew the name of the publishers of any Webster's dictionary? A. Well, I had no particular reason to question them along that line because I was not directly interested other than that we were publishing the dictionary and it was for that reason that I made the inquiry. I did not ask them specifically at that time. I have done so since, but I did not, say, eight or nine months ago.

4919

Q. 8. What was the line of your investigation eight or nine months ago? A. Why, just to determine if the price, ninety-eight cents, as put out through the newspapers, was a success.

Q. 9. In general, what questions would you ask the customers during that earlier period? A. I asked them if they were satisfied with the book as purchased, and if they had purchased more than one, and the reasons for their purchasing more than one.

4920

Q. 10. In general what did they answer to these questions? A. They replied that they considered the book splendid value for the money, and that they had in a great many instances taken particular pains to speak of it to their friends and relatives, and in some instances they had been commissioned to buy this book for those

(Thomas I. Skeoch—Direct.)

4921

friends, or relatives, such replies being very gratifying to me because I could see that the plan was a success as outlined.

MR. HALE: The answer is objected to as incompetent, irrelevant, immaterial, and motion is made to strike it out.

Q. 11. The instances which you speak of were, many of them, before October, 1911, were they not? A. Yes. 4922

Q. 12. And at that time the Syndicate Publishing Company was distributing Webster's New Illustrated Dictionary? A. To the best of my knowledge, yes.

Q. 13. That was the book which the newspapers were handling on the plan, was it not? A. Prior to that time, yes.

Q. 14. During all of this investigation did you ever encounter any purchaser of Webster's New Standard or Webster's New Illustrated Dictionary who claimed to be dissatisfied? 4923

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. No, I never did.

Q. 15. Did many of these customers purchase more than one book? A. Oh, yes, quite a few.

Q. 16. Do you remember any instance where one of the customers said that he had seen one of the books at a friend's house? 4924

MR. HALE: Objected to as calling for hearsay evidence.

A. I cannot recall specifically any particular case, only in a general way I know that they did that.

4925

(Thomas I. Skeoch—Direct.)

Q. 17. Have you in the last ten days made a more particular investigation for the Syndicate Publishing Company? A. I have, yes.

Q. 18. And where did you make that investigation? A. Boston.

Q. 19. What was the method of making it? A. I asked specific questions of quite a number of people, also purchasers of the dictionary.

4926

Q. 20. How did you select the persons from whom you asked these questions? A. At random.

Q. 21. Did you prepare them in any way for the questions which you asked them? A. No more than just ask them if they would answer a certain amount of questions I would ask them; some agreed to it; others did not.

4927

Q. 22. What purpose did you state to them was to be served by the answers to the questions? A. I did not give any explanation at all. I asked them if they would answer the questions. If they said no, that settled it. I read the questions to them. I have them typewritten and I read the questions to them. I told them that I was not in a position to answer any questions.

Q. 23. Where did you see most of these people? A. At the Herald office, or near it, the Boston Herald.

4928

Q. 24. In general, did you ask them the questions before they purchased one of the dictionaries being sold by the Herald? A. In some instances, while waiting, if there happened to be quite a large crowd there, I would ask them the questions previous to their buying the dictionary.

Q. 25. Were any of them deterred from buying the dictionary by your questions?

MR. HALE: Objected to.

(*Thomas I. Skeoch—Direct.*)

4929

A. No, not one.

Q. 26. Have you a list of the questions which you asked these persons? A. Yes.

Q. 27. Will you give that list?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and this line of examination is also objected to upon the same grounds, because calling for hearsay evidence and relating to transactions after issue joined in this suit. 4930

MR. CARROLL: The purpose of this testimony is to rebut the testimony of various salesmen of the G. & C. Merriam Company who have been called by complainant to testify in this case from their experience as salesmen, and upon which testimony complainant obviously intends to found a claim that there is connected with the name Webster in the title of dictionaries a secondary meaning, namely, published by the G. & C. Merriam Company, of Springfield, Mass. 4931

MR. HALE: Complainant's Counsel does not assent to Defendant's Counsel's statement as to the purpose and effect of Complainant's evidence. Complainant's witnesses testified to happenings in the ordinary and usual course of trade extending over a long period of time. While this witness is purporting to testify to what individuals recently interviewed have said to him, such witnesses should themselves be called and sworn. 4932

A. "Q. 1. Do you know who is the publisher or who are the publishers of Webster's dictionary?"

4933

(Thomas I. Skeoch—Direct.)

Q. 28. From the answers made to question 1, are you able to state whether or not the general public know who is or who are the publishers of Webster's dictionary? A. From my investigation I found that they did not know.

4934

MR. HALE: It is stipulated that the objection last above entered shall apply to this entire line of examination without being specifically repeated.

Q. 29. Will you read question 2? A. "Q. 2. When you hear or see the name Webster on a dictionary, does it indicate to you a dictionary gotten up by any particular publisher or at any particular place?"

4935

Q. 30. From your investigation are you able to state whether or not the name Webster in the title of a dictionary indicates to the general public a dictionary gotten out by any particular publisher or at a particular place? A. Well, the majority of the replies that I received were negatives, No.

Q. 31. Do you remember the proportion of these negative answers? A. Well, I should say they were about ninety-five per cent.

Q. 32. Answered "no?" A. Answered "no."

4936

Q. 33. Will you read the third question? A. "Do you know any city or cities where any Webster's dictionaries are published?"

Q. 34. From your investigation are you able to state whether or not the general public know any city or cities where Webster's dictionaries are published? A. The above answer to question 2 will apply to that also.

Q. 35. That is to say, that about ninety-five per cent did not know any city or cities where

(Thomas I. Skeoch—Direct.)

4937

Webster's dictionaries were published? A. Yes, did not know.

Q. 36. Read question 4? A. "Do you know of any series of succeeding rewritings of Webster's dictionary gotten out by any one publisher?"

Q. 37. From your investigation are you able to state whether or not the general public know of any series of succeeding rewritings of Webster's dictionary gotten out by any one publisher? A. I don't recall at the present time of getting any answer in the affirmative on that score. 4938

Q. 38. Everyone interrogated by you then as far as you can remember answered "no" to that question? A. "No," to that question.

Q. 39. Read question 5? A. "Who do you think wrote the definitions and fixed the spelling of the words to be found in the Webster's dictionaries you have known about?"

Q. 40. From your investigation are you able to state who the general public think wrote the definitions and fixed the spelling in Webster's dictionaries? 4939

MR. HALE: Objected to upon the further ground, not waiving previous objection, as calling for conclusion of the witness instead of for the answers given in response to the question.

A. In a great many instances the question was answered by the plain word "Webster." 4940

Q. 41. In other instances it was answered how? A. Noah Webster.

Q. 42. And in other instances? A. "No; don't know; can't tell; never heard."

Q. 43. The sixth question? A. "When do you think these definitions were written and that spelling fixed?"

4941

(Thomas I. Skeoch—Cross.)

Q. 44. From your investigation are you able to state what the general public think as to the date of the fixing of this spelling and the writing of these definitions? A. I got the answer "no" to that, "don't know, can't tell."

Q. 45. During how many days did you pursue this investigation? A. Five days.

4942

Q. 46. And during that period about how many persons did you interview? A. To the best of my recollection about 340.

MR. CARROLL: That is all.

CROSS EXAMINATION by Mr. Hale:

x Q. 47. Did you ask any other questions whatsoever besides the six which you have placed upon the record? A. None whatever.

4943

x Q. 48. In the course of your inquiries, did you find any persons who had never before heard of Webster's dictionary? A. No.

x Q. 50. Did any person upon any of these occasions say anything to you about having used Webster's dictionary in their school days? A. No, I cannot recall that they did.

x Q. 51. Are you certain that they did not? A. I would not go on record as being certain.

4944

x Q. 52. Did anyone ever refer to their past use of Webster's dictionary or their past acquaintance with it in any way? A. No, I had no occasion to question them along that line, and that would not elicit that reply, I don't think.

x Q. 53. And no one volunteered that in any of your conversations? A. Not to my recollection, no.

x Q. 54. You are referring now to this Boston experience? A. Yes, I presume that is what you were referring to, yes.

(*Thomas I. Skeoch—Cross.*)

4945

x Q. 55. How about people you talked with at the earlier stage, eight or nine months ago, for instance? A. No, I cannot recall any conversation along that line whatever.

x Q. 56. Did you ever specifically call the attention of any person that this dictionary of the Syndicate Publishing Company, which you were talking to them about, was not of the old series of Webster's dictionaries?

4947

MR. CARROLL: Objected to on the ground that this witness has not testified that he ever discussed any particular dictionary published by any particular publisher with any one of these persons questioned.

A. I have.

x Q. 57. What did you say to them upon such occasions? A. Well, I had in mind the fact that we had a clause in our dictionary and our dictionary advertising to the effect that this was not gotten out by the supposedly original publisher of the Webster's dictionary, and in my conversation with one or two—I don't know, it may have been three or four—I told them that this was not,—they asked me specifically who was the publisher of this, and I said, "The Syndicate Publishing Company," and they accordingly remarked, well, this was not the original publisher of Webster's dictionary, and I said, no, it was not; it was the Syndicate Publishing Company. That was about the extent of the conversations. I just remember that in passing.

4947

4948

x Q. 58. That was substantially the whole of it upon that subject? A. Yes.

x Q. 59. And all such conversations occurred after the Syndicate Publishing Company had

4949

(Thomas I. Skeoch—Cross.)

begun to use that form of notice? A. I imagine it would be, yes.

x Q. 60. Did you explain to those persons just how the Syndicate Publishing Company came into the Webster's dictionary business? A. No, I have no knowledge of that.

x Q. 61. Or what connection their book had with any genuine Webster's dictionary?

4950

MR. CARROLL: Objected to, inasmuch as it has already been thoroughly proven that Defendant's dictionary is a genuine Webster's dictionary.

A. No; I have not.

4951

MR. HALE: In view of counsel's objection, he is requested to indicate in the testimony of which witness will be found any proof bearing upon the question of whether or not Defendant's book is a genuine Webster's dictionary, or what testimony he refers to by his objection.

MR. CARROLL: Defendant's Counsel refuses to answer. The testimony speaks for itself.

4952

MR. HALE: Complainant's Counsel states that no evidence whatever has been offered either tending to show or purporting to show that Defendant's book has any connection whatever with any genuine Webster's dictionary with which Noah Webster ever had anything to do. If there is such testimony Defendant's Counsel is requested to point it out.

MR. CARROLL: Defendant's Counsel replies that he considers it unnecessary at

(*Thomas I. Skeoch—Re-Direct.*)

4953

this point to enter into a discussion of the past testimony. He also considers it unnecessary for defendant to introduce any evidence on this subject whatever in view of the fact that complainant has not attempted in any way to show by a line of evidence that the dictionary of the defendant was not a genuine Webster's dictionary, and therefore the prima facie statement that it is a Webster's dictionary stands un rebutted.

4954

MR. HALE: Complainant is not required to prove the negative in the first instance.

RE-DIRECT EXAMINATION by Mr. Carroll:

Re-D. Q. 62. I just want to ask you one question: Did these persons with whom you have testified you discussed whether or not the Syndicate Publishing Company were the original publishers of Webster's dictionary, thereafter or at or about that time purchase one of the dictionaries of the Syndicate Publishing Company? A. Yes.

4955

Re-D. Q. 63. They apparently were in no way deterred by the knowledge of the fact that it was not published by the original publishers? A. No.

(Further hearing adjourned to Monday, June 10th, 1912, at 11:00 A. M.)

4956

DEPOSITION CLOSED.

Signature of witness waived by consent.

(*Arthur T. Leon—Direct.*)

NEW YORK, Monday, June 10th, 1912.

Met pursuant to adjournment.

Present: Counsel as before.

ARTHUR T. LEON, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. What is your name? A. Arthur T. Leon.

Q. 2. Age? A. Going on 45.

Q. 3. Residence? A. New Rochelle, New York.

Q. 4. Are you connected with the Cupples & Leon Company, one of the defendants in these cases? A. Yes, sir, I am vice-president and treasurer.

Q. 5. Does the firm of Cupples & Leon Company publish Webster's New Century Dictionary? A. Yes, sir.

Q. 6. When did it begin the publication of this book? A. What do you mean?

Q. 7. When did it begin the publication of a book entitled Webster's New Century Dictionary? A. About the middle of 1907.

Q. 8. How does the Cupples & Leon Company dispose of whatever books it may sell? A. Through the trade, department stores, book stores and general trade.

Q. 9. Does it do any retail business in Webster's dictionaries? A. No, sir, unless a person once in a while, as they do of any book on our list, sends in by mail. I don't think we have sold ten copies since we have sold the dictionaries at retail.

(*Arthur T. Leon—Direct.*)

4961

Q. 10. What is the arrangement made with the ordinary customers of the dictionary? A. They are sold to them.

Q. 11. Are they sold outright? A. Absolutely.

Q. 12. Do you advertise the dictionary at all? A. Only in circulars and catalogues.

Q. 13. To whom are these circulars and catalogues sent? A. The trade.

Q. 14. When you began publishing this book under the name and title of Webster's New Century Dictionary, what was your impression as to the right of any publisher to publish Webster's dictionaries?

4962

MR. HALE: Objected to as incompetent, immaterial and irrelevant, and as calling for the opinion of the witness upon a question of law.

A. That the name Webster was absolutely open to the general public.

4963

Q. 15. Did you ever hear of litigation between George W. Ogilvie and the G. & C. Merriam Company? A. Yes, sir.

Q. 16. When did you hear about that litigation? A. Well, I should think about four or five years ago, whenever the suit was started.

Q. 17. What did you hear about that litigation at that time? A. I understood that the Merriam Company were suing Ogilvie and Ogilvie was suing the Merriam Company.

4964

Q. 18. Did you at that time know anything about the outcome of that litigation? A. Well, I heard—that is, I saw in the Publishers' Weekly Ogilvie won his suit and that the name Webster was at large to the public and could be used by anybody.

4965

(Arthur T. Leon—Direct.)

Q. 19. Did you have any communication with the G. & C. Merriam Company of Springfield, Mass., at the time you began publishing this book?

A. No, sir.

Q. 20. Did you at any time have any communication with the G. & C. Merriam Company about the publication of this book? A. Well, I guess in 1911 we had a letter from the Merriam Company in October, 1911.

4966

Q. 21. What was the substance of that letter?

MR. HALE: Objected to unless the letter is produced.

Q. 22. Have you a copy of that letter? A. No.

Q. 23. What was the substance of that letter?

MR. HALE: The objection is renewed, as the absence of the letter has not been accounted for.

4967

A. That "notwithstanding the very pleasant interview that Mr. Leon and Mr. Brooks had with us, we herewith send you formal notice about publishing of your dictionary," and then enclosed with it was a notice, which I cannot exactly tell the whole wording of, but they thought that we were publishing the dictionary in violation and unfair competition, something to that effect.

Q. 24. About what was the date of this letter?

4968 A. I believe October 18th; 18th or 19th, 1911.

Q. 25. Had you before that time indirectly learned that the G. & C. Merriam Company were objecting to the publication of your Webster's New Century Dictionary? A. Just a day or two before we received a letter from the Stewart Company of Baltimore enclosing a copy of the Merriam's letter to them.

(*Arthur T. Leon—Direct.*)

4969

Q. 26. Is this letter which I show you the letter which you received from Stewart & Company? A. Yes, sir.

Q. 27. Which you have just referred to? A. Yes.

Q. 28. And is this copy which I show you a copy of the letter from G. & C. Merriam Company to Stewart & Company which was enclosed in the letter to you? A. Yes, sir.

4970

MR. CARROLL: By consent of counsel for the G. & C. Merriam Company, the two letters just referred to are spread upon the record.

The letters read as follows:

"119 Fifth Avenue,
New York,
October 16, 1911.

4971

CUPPLES & LEON COMPANY,
443 Fourth Avenue,
New York.

DEAR SIRS: We are enclosing herewith a copy of a letter from G. & C. Merriam Co. to Stewart & Co. of Baltimore under date of October 5th, together with a copy of our reply thereto. As these dictionaries were purchased from you we must request that you advise us immediately as to your right to publish the same and place us in a position so that we may continue the sale of such dictionaries as we have purchased without incurring any liability to the G. & C. Merriam Co.

4972

Very truly yours,

STEWART & Co.

By ERNEST STAUFFEN, JR.,
Vice-President."

4973

(Arthur T. Leon—Direct.)

"COPY

SPRINGFIELD, Mass., October 5, 1911.

MESSRS. STEWART & Co.

Howard & Lexington Strs.,
Baltimore, Md.

GENTLEMEN:—

4974

Your advertisement and sale of a dictionary entitled "Webster's New Century Dictionary—New U. S. Census" has been called to our attention, and we desire to give you formal notice that such advertisement and sale is a plain violation of our rights as the prior and long established publishers of the well known "Webster's" dictionaries. Your book and advertisements are well calculated to deceive the public, and lead them to buy your book in the belief that it is one of our books. This is unfair competition and we are advised by our counsel that it is actionable. The courts have so declared, in several cases, and we have other actions pending against other like infringers upon our rights. We shall insist that our rights, as declared by the courts, be respected.

4975

Trusting that you will at once desist from any further violation of our rights, and awaiting any explanation you care to make, we remain,

4976

Yours truly,

G. & C. MERRIAM Co.,

By O. M. BAKER, President."

Q. 29. Was the letter received by Stewart & Company, a copy of which was sent to you with the above letter from Stewart & Company dated

(*Arthur T. Leon—Direct.*)

4976

October 16th, 1911, copies of both letters appearing in the record, substantially the same as the letter subsequently received by you from the G. & C. Merriam Company? A. I believe so.

Q. 30. Was this letter from Stewart & Company, dated October 16th, 1911, the first intimation of any kind which you had that the G. & C. Merriam Company objected in any way to your publication of Webster's New Century Dictionary? A. Absolutely.

4978

Q. 31. What did you do upon receipt of this letter? A. Went to Springfield.

Q. 32. Who went to Springfield? A. Myself and our secretary, Mr. Brooks.

Q. 33. What did you do in Springfield?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. We had an interview with Mr. Baker and Mr. Washburn.

4979

Q. 34. What occurred at that interview; just what was said at that interview? A. We had very pleasant talks about old times, and it finally wound up, I asked them what they meant by the letter, that we wanted to do anything that was fair, and did not want to do anything to violate the law, and if they had any rights in the name "Webster," that we would abandon the name Webster after consultation with our attorney, if those rights in our attorney's estimation were upheld and justified.

4980

Q. 35. When you returned from Springfield, did you consult your attorneys? A. We did.

Q. 36. And did you learn anything more about the Ogilvie decisions? A. We did.

Q. 37. What did you learn about those decisions

4981

(Arthur T. Leon—Direct.)

4982

4983

then? A. Our attorneys read us several decisions in the Ogilvie case, and told us that the Court had asked Ogilvie to put in his dictionaries and his advertisements a clause, "This dictionary is not published by the original publishers of Webster's dictionary or their successors," but in our opinion, or rather in our attorney's opinion, they did not think this was necessary in this case as Ogilvie had not alone used the word Webster which was at large to the general public but had also put in words which might lead the public to believe that they were buying a book or books established by the Merriam Company instead of the Ogilvie books. But after consultation between my partner and myself we decided to give the Merriams the benefit of every doubt, and voluntarily put in the notice in all our dictionaries, "This dictionary is not published by the original publisher of Webster's dictionary or their successors."

Q. 38. At about what date did you have this interview with your attorneys in which you were advised about the Ogilvie decisions? A. I should say about October 19th to 20th; somewhere about that date, 1911.

Q. 39. Did you immediately thereafter make any change in your title pages? A. Yes, sir.

4984

Q. 40. What change did you make? A. We first ordered a rubber stamp with those words on and every dictionary was stamped until we had a new title page printed and the old ones cancelled and put in.

Q. Did every dictionary issued by you after a date, approximately the 25th of October, 1911, contain upon its title page, either printed or by rubber stamp the notice, "This dictionary is not

(*Arthur T. Leon—Direct.*)

4985

published by the original publishers of Webster's dictionary or by their successors?" A. I think not until November 2nd, which was the date that we received the rubber stamps.

Q. 42. On and after November 2nd then every dictionary issued by you contained that notice? A. Absolutely.

Q. 43. From the beginning of your publication of Webster's New Century Dictionary, did your name "Cupples & Leon Company" always appear as the publisher upon the title page of your dictionary? A. Yes, sir.

4986

Q. 44. From the beginning of your publication of Webster's New Century Dictionary, did your name Cupples & Leon Co. always appear upon the back of your dictionary? A. Yes, sir, with one exception.

Q. 45. What was that exception? A. We printed one edition, and on account of the cost and trying to reduce the manufacture of the book we left that name off, as we had to compete against other books which were being sold at a low price, and we had to reduce our cost as much as possible in order to compete.

4987

Q. 46. I show you a copy of Webster's New Century Dictionary, and ask you if that is the dictionary in the form in which it was published before October, 1911? A. Yes, sir. I might also say that we put on the back of all our publications our name, which is customary in the trade.

4988

MR. CARROLL: I offer that book in evidence.

(Book referred to marked "Defendant's Specimen book, showing form prior to October 1911, June 10, 1912, JAS., Exr.")

4989

(Arthur T. Leon—Direct.)

Q. 47. I show you another copy of Webster's New Century Dictionary, and ask you if that is the form in which all your dictionaries appeared on and after November 2nd, 1911? A. Yes, sir.

MR. CARROLL: I offer that book in evidence.

4990

(Book referred to marked "Defendant's Specimen Book, showing form on and after November 2nd, 1911, June 10, 1912, JAS. Exr.")

Q. 48. Did you on and after the delivery of the above mentioned rubber stamp on November 2nd, 1911, mark with this stamp every catalogue and every circular which was issued by the Cupples & Leon Company? A. Relating to that dictionary, yes, sir.

4991

Q. 49. I show you a copy of one of your catalogues in the form issued by you in the year 1911 for the year 1911 — 1912, and bearing upon the page relating to Webster's New Century Dictionary, the notice "This dictionary is not published by the original publishers of Webster's dictionaries or by their successors," and I ask you if that is the form in which all of your catalogues were issued on and after November 2nd, 1911? A. Yes, sir.

4992

MR. CARROLL: I offer that in evidence.

(Catalogue referred to marked "Defendant's Exhibit, showing form of catalogue issued by the defendant, Cupples & Leon Company, on and after November 2nd, 1911, June 10th, 1912, JAS., Exr.")

Q. 50. Do you remember on or about what date the bill of complaint was filed in this case? A.

(*Arthur T. Leon—Direct.*)

4993

Well, I believe it was some time after November 8th, because I sailed for Europe on that date.

Q. 51. At the time when you sailed for Europe on November 8th, had any bill of complaint been filed? A. No, sir, not to my knowledge.

Q. 52. Did you at that time have any expectation that the complainant in this action would bring suit against the defendant?

MR. HALE: Objected to as incompetent, irrelevant and immaterial. 4994

A. I did not, or I would not have sailed for Europe.

Q. 53. What Webster's dictionaries not published by the G. & C. Merriam Company have you known about during the course of your book business?

MR. HALE: Objected to, unless the books themselves, or specimens of them are produced, because otherwise the question calls for secondary evidence of the contents of such books especially as to title page and covers and inscriptions, it cannot be shown whether or not the publishers of the books referred to have conformed to the limitations upon their rights. 4995

A. The series of Webster's dictionaries published by Laird & Lee, Webster's Modern Dictionary, Webster's vest pocket dictionary; Webster's Standard Dictionary, Elementary edition, Webster's Standard Dictionary, intermediate edition, Webster's Standard Dictionary, Common School Edition; Webster's standard Dictionary, High School and Collegiate Edition, and Webster's Standard Dic- 4996

4997

(Arthur T. Leon—Direct.)

tionary, Encyclopedia Edition. The book published by J. C. Winston, Philadelphia, Webster's New Self Pronouncing dictionary; published by Hearst & Company, New York, Peabody's Webster; Webster's dictionary, book published by David McKay, Philadelphia; Hill's Webster's vest pocket dictionary; book published by John Hovendon, Webster's Standard American Dic-

4998

tionary; book published by the National Publishing Company, Philadelphia. I don't know the name of it, but is published under the name of Webster's dictionary. Book published by C. C. Thompson, successor to Thompson & Thomas, Webster's School and Office dictionary. Book published by the Monarch Book Company, I don't know the title. Series of books published by Saalfeld Publishing Company; book published by the Syndicate Publishing Company, Webster's New Illustrated Dictionary; book by M. A. Donahue & Company of Chicago, Donahue Webster's Standard American Dictionary. I think that is about all.

4999

Q. 54. How many years have you been in the book business? A. Twenty-four years, between twenty-four or twenty-five years.

5000

Q. 55. What Webster's dictionaries not published by the G. & C. Merriam Company, do you remember at or about the beginning of your experience in the book business? A. At that time I did very little in the trade, so I don't remember. The first dictionary I remember was published by Henry G. Allen, Webster's Unabridged Dictionary. After that a book published by Ogilvie. I don't remember whether it was J. S. Ogilvie. Then Laird & Lee's Webster's Modern Dictionary, Webster's vest pocket dictionary, Donahue

(*Arthur T. Leon—Direct.*)

5001

& Henneberry published Webster's Unabridged Dictionary; Hearst & Company published Peabody's Webster.

Q. 56. Can you approximately fix the date or when you heard about the first of these dictionaries? A. I should say somewhere about 1890.

Q. 57. Is the list which you have just given approximately in the order in which you heard of these books? A. Practically, yes.

Q. 58. Have you during the period of your experience in the book business from time to time observed advertisements in various forms by other publishers than the G. & C. Merriam Company in connection with Webster's dictionaries?

5002

A. Yes, sir.

Q. 59. Will you state some of those forms?

MR. HALE: Objected to as calling for secondary evidence and as incompetent.

A. Newspapers, circulars, catalogues, catalogues of mail order houses.

5003

Q. 60. Have any of the dry goods houses in the country advertised Webster's dictionaries not published by the G. & C. Merriam Company?

A. Yes, sir.

Q. 61. Can you state what proportion of dry goods houses have at one time or another advertised Webster's dictionaries not published by the Merriam Company?

5004

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and calling for a mere surmise.

A. I think almost every dry goods house that handles books and dictionaries has advertised them.

5005

(Arthur T. Leon—Direct.)

Q. 62. You spoke about mail order houses as having advertised Webster's dictionaries not published by the G. & C. Merriam Company. Will you kindly give me the names of such mail order houses? A. Montgomery, Ward & Company, Sears, Roebuck & Company, Book Supply Company of Chicago.

5006

Q. 63. For how many years have you known these mail order houses to advertise such Webster's dictionaries? A. I should think fifteen or twenty years.

Q. 64. How many of these catalogues do the mail order houses distribute each year? A. They claim from two to five million.

5007

MR. HALE: The answer is objected to as obviously mere hearsay and not a matter of fact within the knowledge of the witness, and motion is made to strike it out.

Q. 65. Can you estimate the approximate cost of the advertising given to Webster's dictionary not published by the G. & C. Merriam Company in the last twenty years which you have seen?

MR. HALE: Objected to as calling merely for a wild guess.

5008

A. I should say over a million dollars. That is not counting the recent advertising of the Syndicate Publishing Company, which I guess has done a good deal more than that, more than all the others combined

Q. 66. Do you know whether or not any of the Laird & Lee dictionaries which you have mentioned above are used in the schools throughout the country? A. I understand so.

(*Arthur T. Leon—Direct.*)

5009

MR. HALE: The answer is objected to as hearsay and not based upon knowledge of the witness, unless the grounds of his understanding are stated.

Q. 67. Do you know any states in which the Laird & Lee Webster's dictionaries mentioned have been approved for use in the schools by the school authorities; if so, please name them? A. Indiana, Illinois, Ohio, Michigan, Maryland, Kansas, Nebraska, Missouri, Oklahoma and Utah. 5010

Q. 68. More particularly can you name any large cities in the schools of which the Laird & Lee Webster's dictionaries are used? A. Los Angeles, Salt Lake City, Chicago, Indianapolis, Baltimore and I believe Seattle. I am not sure.

Q. 69. Have the Laird & Lee Webster's dictionaries above mentioned, to your knowledge, received any medals or awards in national or international expositions? 5011

MR. HALE: Objected to as incompetent, irrelevant, immaterial and further as calling for mere hearsay, unless the ground of the witness's knowledge is first shown.

A. I believe so.

Q. 70. In what expositions have medals or awards been given to the Laird & Lee Company for their Webster's dictionaries? 5012

MR. HALE: The same objection is repeated.

A. St. Louis, Charlestown, Portland, Jamestown, and Buffalo, at the Pan American.

MR. CARROLL: That is all.

5013

(Arthur T. Leon—Direct.)

CROSS EXAMINATION by Mr. Hale:

x Q. 71. When did you first publish your book called Webster's New Century Dictionary? A. About the middle of 1907.

x Q. 72. Who compiled that original book? A. I understand it was compiled by E. T. Roe.

x Q. 73. Who is E. T. Roe? A. I understand a literary man who compiles dictionaries.

5014

x Q. 74. Have you ever met him? A. I may and I may not. I don't know. I have never met him; I may have seen him.

x Q. 75. Have you ever been in communication with him? A. I don't think so.

x Q. 76. Directly or indirectly? A. What do you mean by directly or indirectly?

x Q. 77. Have you had any communication with him in any way either directly or through agents or by correspondence? A. I have never corre-

5015

sponded with him.

x Q. 78. Has Cupples & Leon ever corresponded with him? A. Not to my knowledge.

x Q. 79. Has any representative of Cupples & Leon ever corresponded with him? A. They may.

x Q. 80. What is your best information and belief on that subject? A. I think they have.

x Q. 81. When? A. Some time in 1911, I believe.

5016

x Q. 82. After your interview and the notice of the Merriam Company as to your use of the name Webster on this book? A. I don't remember whether it was before or after.

x Q. 83. Where was Mr. Roe at that time. A. I believe in Chicago.

x Q. 84. What was his address in Chicago then? A. I don't know.

(Arthur T. Leon—Cross.)

5017

x Q. 85. What do you understand it to be or to have been? A. I understood he worked for Laird & Lee.

x Q. 86. You know where Laird & Lee can be found? A. Yes.

x Q. 87. Did Mr. Roe prepare the manuscript for this book for your concern? A. No, sir.

x Q. 88. From whom did you obtain this book? A. From Louis Klopsch, Christian Herald.

5018

x Q. 89. When you published this book, then, in the middle of 1907 it was a republication of a book that had been previously published? A. Yes, sir.

x Q. 90. In fact, it was the book known as the Crown Dictionary which has been referred to in the pleadings? A. I believe so.

x Q. 91. What did you purchase from Louis Klopsch in this connection? A. A set of plates and the right to publish.

5019

x Q. 92. Was there a written contract upon that subject? A. Yes, sir.

x Q. 93. Have you a copy of that contract? A. No, sir; I don't know if we have or not. I guess we have.

x Q. 94. Will you please produce it here? A. No.

MR. CARROLL: Not having been directed to produce it by subpoena *duces tecum*, defendant is not prepared to produce it.

5020

MR. HALE: Defendant's counsel are called upon to produce the contract for the cross examination of this witness.

MR. CARROLL: Defendant's counsel objects to producing such a contract unless specifically directed to do so by subpoena

5021

(Arthur T. Leon—Cross.)

duces tecum, which subpoena will be objected to on the ground that the request is incompetent, irrelevant and immaterial.

x Q. 95. What was the price paid to Louis Klopsch for what you bought from him? A. I refuse to answer.

5022

x Q. 96. After you bought the plates what was the first thing you did? A. Bought paper, sent the plates to the printer and published the book.

x Q. 97. Under what name? A. Students New Century Dictionary.

x Q. 98. In other words, upon your first publication of it you changed its name? A. Yes, sir. We changed the name because—

5023

x Q. 99. Hold on. That is all that is relevant there. At the time you made this purchase of plates of the Crown Dictionary had you then determined to changed its name to Students New Century Dictionary? A. We did not know what name we would use, but we could not use the name Crown Dictionary because that was still being used by the Christian Herald, and it was understood that we were to publish it under another name.

x Q. 100. Was that part of the contract? A. I think it was a verbal agreement.

5024

x Q. 101. How long did you publish this book under the title of Students New Century Dictionary? A. About two and a half years.

x Q. 102. Then did you again change the title of this book? A. Yes, sir.

x Q. 103. What was the date of that change? A. About the middle of 1907.

x Q. 104. You have stated that you purchased the book in the middle of 1907? A. No, sir, I did

(*Arthur T. Leon—Cross.*)

5025

not. I never have stated it. You asked me when we published the book under the name Webster's New Century Dictionary. I told you the middle of 1907. We purchased the book in 1904.

x Q. 105. In other words, you published the book from 1904 until the middle of 1907— A. From 1905. We purchased the book late in 1904 and we published the book in 1905 and 1906 until the middle of 1907 under the name Students New Century Dictionary.

5026

x Q. 106. And then in the middle of 1907 or about that time you again changed the title and adopted the title Webster's New Century Dictionary? A. Yes, sir.

x Q. 107. Whose idea was it to change the title and use the name Webster at that time? A. We had several requests from our large customers who called our attention to the fact that we had a Webster's dictionary as printed on the title page, that it was based upon the unabridged dictionary of Noah Webster, and they did not see any reason why we could not call it a Webster, or change it to Webster's New Century Dictionary, the right name.

5027

x Q. 108. In other words you changed this name at the suggestion of your customers among the trade? A. Yes.

x Q. 109. And the suggestion and idea came from them and was not original with yourself? A. Yes.

5028

x Q. 110. At that time did you take legal advice as to your right to change the name? A. No sir, because we did not believe it was necessary.

x Q. 111. Just what was your idea as to your right as one of the public to use the name Webster in connection with dictionaries? A. That any-

(*Arthur T. Leon—Cross.*)

5029

body who had a dictionary which was based upon the unabridged dictionary of Noah Webster could call it Webster's dictionary.

x Q. 112. And is that still your view? A. Yes sir.

x Q. 113. And you made no further investigations than you have here stated as to your right to make that change? A. No sir.

5030

x Q. 114. What if any editorial changes or revisions did you make when you first published the book under the name Students New Century Dictionary; I mean changes from the Crown Dictionary? A. I don't remember.

x Q. 115. Did you make any substantial or considerable changes? A. I don't remember that.

x Q. 116. As a matter of fact you know and believe that you did not, don't you? A. I don't know how many changes there were made.

5031

x Q. 117. What if any changes were made when you changed the title again from Students New Century Dictionary to Webster's New Century Dictionary? A. New words added.

x Q. 118. How many? A. I don't know.

x Q. 119. As many as twenty? A. Yes, more than that I guess.

x Q. 120. As many as one hundred? A. I don't know, as I did not attend to that part of the business.

5032

x Q. 121. Who did attend to that part of the business? A. I got somebody who fixed it.

x Q. 122. Who did you get to fix it? A. I don't remember who did the first part.

x Q. 123. Who did any part? A. One of our literary men.

x Q. 124. What is his name? A. He is in our employ.

(Arthur T. Leon—Cross.)

5033

x Q. 125. What is his name? A. Mr. Lazarus.

x Q. 126. What is his position in your company?

A. He has charge of the advertisement and editorial work.

x Q. 127. Did he do editorial work besides the editorial work upon this dictionary? A. Yes sir.

x Q. 128. Is he still in your employ? A. Yes sir.

x Q. 129. Do you know of your own knowledge whether or not this dictionary of yours is in fact based upon any edition of Webster's dictionary? A. Yes sir. 5034

x Q. 130. What personal knowledge or information have you upon that subject? A. From my own comparison.

x Q. 131. What comparison did you make? A. I compared the book with Webster's 1847 edition or one of the early Websters.

x Q. 132. With which book did you compare it? A. I think it was the 1847.

x Q. 133. What was the extent of that comparison? A. Oh, I spent several evenings, several hours at a time. 5035

x Q. 134. Did you reduce the results of that comparison to writing in any way? A. I think I had a lot of words which I wrote down in our book and in Websters.

x Q. 135. What words were they? A. I don't remember. I took them at random. I took some pages here and took some pages there, skipped and went along through the book. 5036

x Q. 136. Can you point out any word or definition in your dictionary which was taken from the 1847 edition of Websters unabridged dictionary?

A. I guess I could by going through it again.

x Q. 137. The books are before you. Please do so? A. The books are not before me.

5037

(Arthur T. Leon—Cross.)

x Q. 138. Your book is before you? A. Yes, but I have to compare it with the 1847 Websters in order to show you.

x Q. 139. And you did not keep a memorandum of your comparison? A. They were torn up afterwards.

x Q. 140. Why did you tear them up? A. Because there were other searches made more comprehensive.

5038

x Q. 141. Who made these other searches to which you refer? A. I don't know.

x Q. 142. What information have you as to these other searches? A. I think Professor Peck made them.

5039

x Q. 143. From the time you began the publication of this book up to the present date, have you maintained an editorial force engaged in the revision of this dictionary from time to time? A. Our editorial force does whatever is necessary to any of our books.

x Q. 144. Who constitutes your editorial force? A. The man I mentioned, Mr. Lazarus, and if necessary we employ other people.

x Q. 145. Have you found it necessary to employ anyone besides Mr. Lazarus upon this dictionary? A. I think we did before have somebody. I don't know who did it, though, because as I told you it is not my part of the work.

5040

x Q. 146. Who will know the facts in that connection in your concern? A. I guess Mr. Cupples will know.

x Q. 147. What precise book do you claim your book is based upon? A. I did not compile the book and for that reason I don't know. "Upon the unabridged dictionary of Noah Webster's" it says upon the title page.

(*Arthur T. Leon—Cross.*)

5041

x Q. 148. And is that all you know about it?
A. It is.

x Q. 149. Have you any knowledge or information which might lead you to doubt whether this book was in fact based upon the unabridged dictionary of Noah Webster? A. No sir.

x Q. 150. No knowledge or information suggesting that it is based upon some other book? A. No.

x Q. 151. Have you ever heard the title of any other book suggested as the book upon which this book was really based? A. Not that I remember.

5042

x Q. 152. You have no recollection whatever of any other dictionary? A. No sir.

x Q. 153. Have you any information, or have you ever heard that the Crown dictionary of which your book is a substantial reproduction was based upon some English dictionary? A. No sir.

x Q. 154. Do you know what the fact is in that regard? A. No sir.

x Q. 155. And you have no information? A. No.

5043

x Q. 156. No one ever told you that it was in fact not based upon Webster's dictionary? A. Absolutely not.

x Q. 157. Either directly or indirectly? A. Not that I remember.

x Q. 158. Has there been any general revision or change of the contents of your book since the time you first acquired it except the addition of the few words more or less which you have stated were added? A. Yes, we made several additions.

5044

x Q. 159. What were they? A. Well, new census, new political changes.

x Q. 160. Such additions as you made were in the preparatory or supplemental part of the book, and not in the vocabulary of the dictionary

5045

(Arthur T. Leon—Cross.)

proper? A. Outside of the changes we made in the vocabulary, those were in the supplemental.

x Q. 161. Has the dictionary part proper, that is, the word list and the definitions always been printed from the same plates or duplicates which you acquired from Louis Klopsch? A. Yes, with the exception of the changes we made.

5046

x Q. 162. Those changes were made by sawing or cutting the plates; that is by what are termed plate corrections? A. Plate corrections, sometimes we set up an entirely new page where it was necessary.

x Q. 163. How many entirely new pages have you ever set up? A. I don't know.

x Q. 164. Can you point out any new pages which were entirely set up by you? A. No, I don't think I could.

5047

x Q. 165. What was the date of the comments in the Publishers Weekly in regard to the Ogilvie litigation which you say you saw? A. I could not remember.

x Q. 166. That was some five or six years ago, though? A. I believe so.

x Q. 167. Have you copies of the Publishers Weekly which you saw at that time? A. I don't know. It may be barely possible and may be not.

x Q. 168. Have you looked them up since this controversy was started? A. No, sir.

5048

x Q. 169. In the copy of your dictionary which you have offered in evidence as "Defendant's Exhibit Specimen Book showing the form prior to October, 1911," I noticed two copyright notices as follows: "Copyright 1904 by Louis Klopsch, New York," "Copyright 1905 by Cupples & Leon, New York." In the Exhibit filed with the bill of complaint herein marked Complainant's Exhibit,

(*Arthur T. Leon—Cross.*)

5049

Defendant's Dictionary, I notice you only have one copyright notice as follows: "Copyright 1911 by Cupples & Leon Company." Why did you omit the two prior copyright notices? A. That was an omission of the printer's.

x Q 170. What is the answer, please? A. It was an omission of the printers, subsequently corrected.

x Q. 171. Not corrected, however, until after October, 1911? A. I would not be sure of that.

5050

x Q. 172. What new matter is there in the dictionary of the edition filed as an exhibit with the bill marked "copyright 1911," to which the 1911 copyright refers? A. Quite a lot.

x Q. 173. What; describe it, or indicate it? A. Pictures, words.

x Q. 174. What else? A. U. S. Census, an article of political changes.

x Q. 175. How many new words were there? A. I don't know.

5051

x Q. 176. Do you know whether there were any or not? A. Yes, sir.

x Q. 177. Who prepared the title page in your first edition of the book under the name of Webster's New Century Dictionary? A. I cannot remember. I think it was an exact copy of the original one.

x Q. 178. You mean a copy with the substitution of the name "Webster" for the word "Crown," and the change in the form of display? A. Probably.

5052

x Q. 179. Whose idea was it to feature the name Noah Webster upon the title page of your book whereas it was not so featured upon the title page of the Crown dictionary? A. I don't remember whose idea it was.

(*Arthur T. Leon—Cross.*)

5053

x Q. 180. Except for the opinion which you have expressed based upon the comparison which you say you made of this book with the 1847 Webster, you do not know whether or not the statement upon the title page of the book is true, namely, "based upon the unabridged dictionary of Noah Webster?" A. Well, Profesor Peck told me he made the comparisons and found it to be a Webster, based upon the unabridged dictionary of Webster.

5054

x Q. 181. But that is the sole extent of your information upon that subject? A. Yes, sir.

x Q. 182. What do you mean by the word "based upon" in that statement in your book? A. A lot of the words which are in all dictionaries are taken from the old unabridged dictionary of Noah Webster with the abridged definitions.

5055

x Q. 183. In other words that statement upon your book means that the unabridged dictionary of Noah Webster was actually used in the composition of this book? A. I should think so.

x Q. 184. And that some part of the literary matter contained in the dictionary of Noah Webster is reproduced or carried forward into this book? A. It may be in abridged form.

x Q. 185. But you mean it was before the Editor and was used by him in an abridged form, or he made selections therefrom? A. Yes.

5056

x Q. 186. And that is what that statement means upon your book? A. Yes.

x Q. 187. Until November 2nd, 1911, the dictionaries published by you under the name of Webster did not carry the warning notice, "This dictionary is not published by the original publishers of Webster's dictionaries or by their successors"? A. No sir.

(*Arthur T. Leon—Cross.*)

5057

x Q. 188. And no advertisement of your dictionary bore those words? A. No sir.

x Q. 189. Have the advertisements of your dictionary since borne those words? A. All the advertising which we do direct such as circulars and catalogues have.

x Q. 190. Have you seen any advertisements of your book that did not bear those words? A. Any of ours?

5058

x Q. 191. Have you seen any advertisements of your book that did not bear those words? A. Not that I remember. Of our book.

x Q. 192. Yes. A. By ourselves?

x Q. 193. I mean, have you seen any advertisements of your Webster's New Century Dictionary which did not bear those warning words since November 2nd, 1911? A. Not that I remember.

x Q. 194. What is your best information and belief upon that subject? A. Well, I don't know; we do not control the advertising of our customers. 5059

x Q. 195. The question is not what you control but what you have seen. Have you seen any advertisement of your book by your customer or anyone else that did not contain those warning words since November, 1902? A. No, I don't remember.

x Q. 196. Did you at any time instruct your customers that those words must be used in their advertisements, and announcements of your dictionary? A. We did. 5060

x Q. 197. How did you notify them? A. Put it on our bills.

x Q. 198. What did you put upon your bills? A. It is necessary that all advertising of our dictionary must bear the following words.

5061

(Arthur T. Leon—Cross.)

x Q. 199. Is that the only thing you did in that regard, by placing that statement upon your bills? A. I think that is all.

x Q. 200. Did you take any steps to see that that notice was obeyed? A. No.

5062

x Q. 201. Your exhibit marked "Defendant's Exhibit, showing form of catalogue issued by defendant, Cupples & Leon Company on and after November 2nd, 1911", was issued some time after November 2nd, 1911, is that correct? A. Well, the catalogue itself was issued long before, but every catalogue that went out, our employees were strictly instructed to put that notice on.

x Q. 202. You mean the rubber stamp notice? A. Yes.

x Q. 203. When was the catalogue issued in its original form without the stamp notice? A. I think it was in June, 1911.

5063

RECESS UNTIL 2:15 P. M.

JUNE 10th, 1912,
2:15 P. M.

ARTHUR T. LEON, resumes the stand.

CROSS EXAMINATION CONTINUED by Mr. Hale:

5064

x Q. 204. This catalogue advertisement, therefore, speaks from its date of issue; is that correct? A. I don't know what you mean by that.

x Q. 205. The statements made in this catalogue advertisement. I suppose it to be true of the time when they were made; is that correct? A. Yes.

x Q. 206. In this catalogue advertisement I

(*Arthur T. Leon—Cross.*)

5065

find the statement, "up to date. New from A to Z. This dictionary is fresh from the press, and is revised and brought up to date; based upon the unabridged dictionary of Noah Webster, and embodies the latest decisions of the foremost American and English authorities on spelling, pronunciation and definition. It embodies all modern words and meanings up to the date of going to press." Is that statement true? A. As far as I know, yes.

5066

x Q. 207. Do you know whether it is true or not? A. I told you.

x Q. 208. What did you tell me? A. As far as I know.

x Q. 209. What do you know? A. It is supposed to be true, sure.

x Q. 210. Who revised and brought the book up-to-date as stated in the language quoted?

MR. CARROLL: I object to that as having already been fully answered by this witness.

5067

A. E. T. Roe and other literary men.

x Q. 211. All of E. T. Roe's work was done in the edition called the Crown dictionary, wasn't it? A. I think so.

x Q. 212. He did nothing to it after you bought the plates of the Crown Dictionary? A. No, sir.

x Q. 213. And Mr. Lazarus is the only one you can name who did any editorial work upon it after that date? A. Well, somebody else; I don't remember who.

5068

x Q. 214. And you don't remember what he did? A. I told you once before that that is out of my department.

x Q. 215. And the revision in bringing up-to-

(*Arthur T. Leon—Cross.*)

5069

date, so far as the dictionary was concerned, consisted in the plate corrections, the body of the book being printed from the original plates, bought from Louis Klopsch; is that correct? A. Yes, except as some of those pages have to be reset entirely.

5070

x Q. 216. This same advertisement contains the descriptive phrase, "An up-to-date and authoritative dictionary." What does the word authoritative mean in that connection? A. It means that every definition is put in according to authority.

x Q. 127. What authority? A. Webster and others.

x Q. 128. Do you know how a dictionary acquires what is termed authority? A. I suppose from the way definitions are given, and based upon some earlier or later authority.

5071

x Q. 219. In the dictionary filed with the bill, which bears the single copyright notice and the year 1911, I also noted upon the title page the phrase, "Revised and brought up to date in accordance with the most recent, eminent English and American authorities, by Edward T. Roe, L. L. B." Did the words, "Revised and brought up to date" in this statement upon the title page same as the similar words in the advertisement last called to your attention, which you have explained? A. Yes, except that we have added some other words which were not revised by Roe—were not put in by Roe.

5072

x Q. 220. And Roe's work was all done in a book published and copyrighted in the year 1904, whereas this book involved in this suit was published and copyrighted in the year 1911; is that correct? A. I think so.

(*Arthur T. Leon—Cross.*)

5073

x Q. 221. In this same catalogue advertisement I observe the following words, "This dictionary is not a cheap makeshift compiled of various sources of doubtful authority, neither is it a reprint from old plates, but a new, fully revised work, having for its basis the acknowledged fountain head of pure, correct English—the Noah Webster dictionary." Is that statement in your advertisement issued in the year 1911 true? A. Yes. When we first bought the book we were told that the—

5074

MR. HALE: I object to what the witness was told as hearsay.

THE WITNESS: (Continuing) The book was to be set up brand new, from A to Z.

MR. HALE: The statement of what the witness was told is objected to as hearsay and motion is made to strike it out; also upon the ground that it is not responsive.

5075

THE WITNESS: Well, I will say this: We bought it with the understanding—

MR. HALE: I object to any volunteered statement of the witness.

MR. CARROLL: Go ahead and answer.

THE WITNESS: We bought it with the understanding that it was a new dictionary set up from type, from A to Z, and brand new plates made.

5076

MR. HALE: The statement is objected to upon the grounds stated in the last previous objection and motion is made to strike it out.

5077

(Arthur T. Leon—Cross.)

THE WITNESS: And I also say that the plate maker came to us—

MR. HALE: I object to it, and I ask the Special Examiner to caution the witness that he must answer questions and not volunteer statements.

MR. CARROLL: You may discontinue. I will ask you those questions.

5078

x Q. 222. In this advertisement issued in 1911 you stated that your book was not a reprint from old plates; yet you have admitted that it is printed from plates purchased from Louis Klopsch and the Crown Dictionary, made and published seven years previous. Do you still maintain that the statement quoted to you is true? A. Absolutely, because I don't consider a book seven years old very old.

5079

x Q. 223. Nevertheless, it is true that your so-called Webster's Century Dictionary is reprinted from the plates of the seven year old Crown Dictionary? A. Not reprinted; it is printed, with a lot of additions.

x Q. 224. Of the character to which you have already testified? A. Yes.

5080

x Q. 225. Have you in your possession or under your control any copies of advertisements issued of your dictionary during the year 1911, and prior to the beginning of this suit? A. I don't know.

x Q. 226. Have you—that is, the defendant—in its possession any copies of any of the circulars, notices or announcements relating to this dictionary issued prior to the beginning of this suit? A. I don't know.

x Q. 227. Does the defendant keep an advertising register or its equivalent? A. It does.

(Arthur T. Leon—Cross.)

5081

x Q. 228. Such advertising register would contain such advertisements as you have issued, would it not? A. Probably.

x Q. 229. Will you produce the same here so that we may see the advertisements to which you have referred in your direct examination?

MR. CARROLL: Not without a subpoena *duces tecum*.

MR. HALE: Let us have the witness answer. That is counsel's statement. 5082

THE WITNESS: I will do so on the advice of counsel.

x Q. 230. As between you—that is, the Cupples & Leon Company and the Syndicate Publishing Company—which was first to change the title of the book to a form using the name Webster? A. I think we were; I am not sure.

x Q. 231. Has your company any arrangement with the Syndicate Publishing Company for the joint defense of these two suits, or for the sharing of the expenses thereof? 5083

MR. CARROLL: I object to that as incompetent, irrelevant and immaterial.

A. I refuse to answer.

x Q. 232. Have you, or the defendant, in its possession any letters which your customers wrote you suggesting that you change the name of your book from "Students' New Century" to "Webster's New Century Dictionary"? A. They didn't write any letter to that effect. We were told personally. 5084

x Q. 233. How many persons or concerns told you that personally? A. Several.

(*Arthur T. Leon—Cross.*)

5085

x Q. 234. How many? A. I could not say how many.

x Q. 235. Who were they? A. I don't remember.

x Q. 236. Do you remember the names of any of them? A. No, sir.

x Q. 237. Where were they located? A. I think probably one—Mr. Hesslein.

5086

x Q. 238. What is his address? A. Care of Adams & Yale, New York. I am not sure he was one.

x Q. 239. Can you recall any others? A. No.

x Q. 240. Can you recall the cities where they were located? A. No.

x Q. 241. What did they say to you? A. "Don't see why you call it the Webster's dictionary as stated on the title pages"; that it was based upon the unabridged dictionary of Noah Webster.

5087

x Q. 242. What else did they say? A. That is all.

x Q. 243. Can you recall anything else that they said? A. No.

x Q. 244. Did they suggest any reasons for changing it? A. No.

x Q. 245. Who furnishes the copies of the advertisements for your book issued by the trade? A. The trade.

5088

x Q. 246. You mean they prepare their own advertisements? A. Yes, sir.

x Q. 247. What data or information do you supply to them in that regard? A. Our catalogue.

x Q. 248. And the other advertising matter to which you have referred? A. What other advertising matter?

x Q. 249. You have testified that you have advertised by circulars and otherwise to the trade?

(*Arthur T. Leon—Cross.*)

508c

A. Well, circulars—practically a reproduction of that page in the catalogue.

x Q. 250. Do you mean to say you have never changed your form of advertisement of this book from the form that appears in this catalogue which has been made an exhibit? A. Well, we maybe changed the wording from time to time.

x Q. 251. What has been the retail price of your book from the time you began to use the name Webster in its title? A. Various prices.

5090

x Q. 252. Name them, please? A. The first one I think was a dollar and a quarter; a dollar seventy-five; two dollars; three dollars, and three dollars and a half, according to the style of binding. Then we got out a popular edition, and listed it at a dollar.

x Q. 253. And sold for what? A. Any price that the dealers saw fit.

x Q. 254. Have books actually been sold at retail at the prices which you have named? A. I suppose so.

5091

x Q. 255. Do you know? A. Well, I think Putnam's used to get their full list price. Brentano used to get their full list price.

x Q. 256. Have Putnams and Brentano handled your dictionary? A. Yes.

x Q. 257. In the course of retail trade? A. Yes, sir.

x Q. 258. I show you a copy of the style of book filed as an exhibit with the bill, and ask you what was the retail price of that style or edition? A. I think we put a retail price of two dollars and a half on it.

5092

x Q. 259. Has that book ever been sold at the retail price of two dollars and a half? A. I don't know.

(Arthur T. Leon—Cross.)

093

x Q. 260. Don't you know, as a matter of fact, that it has been very largely sold for the sum of ninety-eight cents in retail stores? A. Some have sold it at that price. It is customary to put on a list price on every book. Publishers give a discount from the list price, and the trade sells it at whatever price they see fit, except in cases of net books, where they sell them exactly at the publisher's price.

5094

x Q. 261. Your list prices which you have given have not then been generally maintained? A. In the small cities, I think they have.

x Q. 262. Have you published any better or more expensive or higher list price books than the book of the style filed as an exhibit with the bill? A. We have.

x Q. 263. Have you any specimen copies of it? A. I think we have.

5095

x Q. 264. In what way did they differ from this one? A. They were printed on thin paper, red and gold edges, leather binding and index.

x Q. 265. When was that edition issued? A. I think sometime in 1909 or 1910. I don't remember which.

5096

x Q. 266. I show you an advertisement which has been offered in evidence as a part of Complainant's Exhibit, "Defendant's Advertisement," this one being one bearing the name of O'Neill-Adams Company, who were one of the concerns which you say suggested that you change the name of your book from the Students' New Century Dictionary to Webster's New Century Dictionary, and I ask you if you ever saw that or any similar advertisement (handing)? A. I saw this advertisement but it was not prepared by us.

(*Arthur T. Leon—Cross.*)

5097

x Q. 267. This advertisement uses the descriptive phrase, "Used by the highest authorities here and abroad." Who are the highest authorities there referred to? A. I am not responsible for any advertisement of the trade.

x Q. 268. Do you know that——. A. I don't know anything about it.

x Q. 269. Do you know that your book is used by the highest authorities here and abroad? A. I am not responsible; for that reason I don't know anything about it. 5098

x Q. 270. I also see in this advertisement the descriptive phrase, "Greatest offer of a recognized work ever known."

MR. CARROLL: I object to all this line of questioning on the ground that it is incompetent, irrelevant and immaterial, this witness having already several times testified that he had no connection with or control over the advertising of various customers of his in the trade. 5099

MR. HALE: The defendant is responsible for the natural and probable consequences of placing a deceptive book in the hands of its customers for retail trade.

MR. CARROLL: In answer to this unnecessary statement by counsel for Complainant, I wish to say that the defendant is not responsible for advertisements independently prepared and independently inserted in newspapers or other mediums by customers who have purchased the book outright from this defendant, the contents of such advertisements having in no way been suggested by this defendant. 5100

5101

(Arthur T. Leon—Cross.)

MR. HALE: If the defendant will produce its advertising register showing the matter which it sent to its retail customers, its responsibility for a large part of the contents of these advertisements will appear. The identity between language used in different advertisements of widely separated concerns is certainly evidence of a common origin; and defendant has the means of making the proofs which have been called for, but refused.

5102

x Q. 271. (Continuing) Did the phrase, "a recognized work" occur in any of the advertising matter issued by the defendant? A. Not that I know of.

x Q. 272. Well, do you know whether it did, or it did not? A. No; I think so. If it is not in the circular, it did not appear.

5103

x Q. 273. This same advertisement contains the words, "Climax of a stupendous deal with publishers." Was there at or about that time a stupendous deal between Cupples & Leon Company and O'Neill-Adams Company?

MR. CARROLL: I object to that as incompetent, irrelevant and immaterial.

A. I refuse to answer.

5104

x Q. 274. In the paragraph marked 24 of Defendant's answer appears the statement, "Defendant denies that in the publication of said dictionary under the title Webster's New Century Dictionary, it omitted the form of copyright notice which contained the date 1904, and substituted in lieu thereof a new copyright notice bearing the date 1911." I show you a copy of the Crown Dictionary, which is an exhibit in this case.

(*Arthur T. Leon—Cross.*)

5105

and call your attention to the fact that it bears the single copyright notice, "Copyright 1904 by Louis Klopsch, New York;" is that correct? A. Yes.

x Q. 275. I show you a copy of the volume filed as an exhibit with the bill,—of your dictionary, Webster's New Century Dictionary, printed from the plates of the Crown Dictionary, as testified to by you, bearing the single copyright notice, "Copyright 1911 by Cupples & Leon Company;" is that correct? 5106

MR. CARROLL: I object to that as irrelevant and immaterial, and on the ground that the book speaks best for itself; on the further ground that this witness has already testified that the copyright notices, if omitted from that book, were omitted by mistake.

x Q. 276. The statement in the bill which the answer as above quoted denies was therefore true, as to this edition of your book? A. I told you, some copies—the printer omitted the copyright on some copies, and I don't think even the whole edition went out with that single copyright notice in, but we had a new title page printed as soon as it was noticed, and corrected. 5107

x Q. 277. The statement of the bill, however, was correct as to this book? A. As to that particular one volume, yes. 5108

x Q. 278. And there was more than one volume? A. How many, I don't know; but as soon as we noticed it we had a correction made and we gave the printer Hail Columbia for it.

x Q. 279. Who was the printer? A. I don't remember which one printed that.

(*Arthur T. Leon—Cross.*)

5109

x Q. 280. Well, what was the name of the printer? A. Well, we have several people printing that dictionary.

x Q. 281. Name a few who might have printed this book? A. Van Ries Press, Monroe or Caxton Press. I think it was Van Ries. I am not sure.

x Q. 282. And when was it that you gave the printer Hail Columbia, as you term it? A. When we first noticed it.

5110

x Q. 283. And that was when? A. Shortly after we got some books in.

x Q. 284. As a matter of fact, wasn't it after the complainant had called your attention to that fact? A. I don't remember.

x Q. 285. Well, what is your best information and belief? A. I wasn't here at that time, shortly after; so I don't remember whether it was before or afterwards.

5111

x Q. 286. Was it before or after you went to Europe? A. I could not remember.

x Q. 287. In the twenty-fifth paragraph of defendant's answer I find that the defendants "have at all times indicated on title pages on the cover of the dictionary and in advertisements the true origin and identity of said dictionary." Please point out in any of the exhibit volumes of your dictionary the matter referred to by the statements quoted. In other words, I want to

5112

know in what manner and by what words you indicated the true origin and identity of your dictionary? A. On the title page of the dictionary, "based upon the unabridged dictionary of Noah Webster L. L. B. New York, Cupples & Leon Company." On the back of the book, "Cupples & Leon Company."

(*Arthur T. Leon—Cross.*)

5113

MR. CARROLL: That was on the outside back cover.

THE WITNESS: On the outside back cover.

x Q. 288. And that is the only matter or language to which that averment of your answer relates. Is that correct? A. Yes, sir.

x Q. 289. And you changed the name of your dictionary from "Crown" or "Students" to "Webster" upon the strength of that statement appearing upon the title page, "based upon the unabridged dictionary of Noah Webster"? A. Yes, sir. 5114

x Q. 290. And at that time you did not know whether that statement was true or false? A. It was on the title page.

x Q. 291. And that is all you knew about it? A. We naturally supposed it to be correct.

x Q. 292. And that is all you knew about it? A. We naturally supposed it to be correct. 5115

x Q. 293. And that is all you knew about it at the time? A. I answered that question several times.

x Q. 294. You haven't answered the question at all. You have stated you supposed that to be correct. Did you have any other information than what appeared upon the title page at that time? A. Not at that time, no.

x Q. 295. And you made no further investigation at that time? A. No, sir. 5116

x Q. 296. Have you heard from any one since that time that that statement is not true? A. No.

x Q. 297. Neither directly or indirectly? A. No, sir.

x Q. 298. Have you any reason whatever of any kind to suppose that that statement is not true? A. I have not.

5117

(Arthur T. Leon—Cross.)

5118

x Q. 299. In this same twenty-fifth paragraph of your answer you also say that in pursuit of your purpose to distinguish your dictionary from those of the complainant, that, "defendants, before the institution of this suit against it by the Merriam Company caused to be inserted in the title page in such dictionary the following language, to wit: 'This dictionary is not published by the original publishers of Webster's dictionaries or by their successors.' " The answer does not state the date of that impression. However, that impression was made on or about November 2nd, as you have heretofore testified? A. Yes.

x Q. 300. Which was seven days prior to the filing of the bill in this case; is that correct? A. If the bill was filed on the 9th, I suppose that was seven days before the second.

5119

MR. CARROLL: The 2nd was seven days before the 9th.

THE WITNESS: Yes.

x Q. 301. You stated on your direct examination that when you made this change of title and adopted the name Webster's as descriptive of your dictionary, that you believed that the name Webster was absolutely open to the public? A. Yes, sir.

5120

x Q. 302. Just what did you mean by that phrase? A. Anybody who has a dictionary based upon Noah Webster's dictionary, could call it Webster's dictionary.

x Q. 303. Suppose a dictionary was not in fact based upon any dictionary by Noah Webster. Do you still maintain the right to use the name Webster's in the title of such a dictionary?

(*Arthur T. Leon—Cross.*)

512

MR. CARROLL: I object to that as incompetent, irrelevant and immaterial.

A. I don't know. I suppose that is a question of law.

x Q. 304. Well, did your belief at that time extend as far as that?

MR. CARROLL: I object to that as incompetent, irrelevant and immaterial.

5122

A. I refuse to answer.

x Q. 305. Did you believe at that time that you were entitled to use the word Webster in the title of your dictionary regardless of whether it was or was not based upon any dictionary of Noah Webster?

MR. CARROLL: I object to that as incompetent, irrelevant and immaterial, and on the ground that this witness has testified from the beginning that he believed and still believes it was based upon Webster's dictionary.

5123

A. I refuse to answer.

x Q. 306. Did the statements which you saw in the Publishers' Weekly, referring to the outcome of the Ogilvie litigation, have anything to do with the adoption of the name Webster in the title pages of the dictionary? A. Nothing whatever.

5124

x Q. 307. You have referred to a letter which the complainant sent to Stewart & Company of Baltimore, complaining of their circulation of the Webster's New Century Dictionary published by defendants. At that time none of the dictionaries handled by Stewart & Company bore the warning words which were inserted in dictionaries on and after November 2d, 1911? A. No, sir.

5125

(Arthur T. Leon—Cross.)

x Q. 308. You have stated that you told the Merriam Company in an interview shortly before this suit was begun that you had no desire or purpose in violating their legal rights. At that time you intended, however, to use the name Webster so far as the law would permit you to do so; is that correct?

5126

MR. CARROLL: I object to that as incorrectly summarizing his testimony.

A. Absolutely.

x Q. 309. And who determined what your own legal rights in the premises were—yourself or your attorneys? A. Yes, sir.

x Q. 310. Yourself and your attorneys? A. Yes, sir.

5127

x Q. 311. After this interview with the complainant company, you say you consulted your counsel. Did you tell your counsel at that time that your book was based upon the Webster's Unabridged Dictionary of 1847, and request their advice upon that assumption? A. I showed them our dictionary, and asked their advice upon the publication of our dictionary.

x Q. 312. Did you tell your counsel at any time that there was doubt as to whether in fact your book was in truth based upon any edition of Webster's dictionary? A. No, sir.

5128

x Q. 313. You have spoken of competition with other books which required you to sell an edition of your book at a low or reduced price. What was the competing book there referred to? A. Several.

x Q. 314. Name them? A. Syndicate Publishing Company's, Winston's book, the Merriam book, and several others I cannot think of.

(*Arthur T. Leon—Cross.*)

5129

x Q. 315. You have stated that Laird & Lee's dictionaries have been approved for school use in certain States which you named. How do you know that fact? A. In my travels, when I visited the book trade of those States and wanted to sell our book, they told me they could not buy it for the reason that Laird & Lee's have been adopted and that they had to handle this book.

x Q. 316. And is that all you know about that subject? A. Mr. Lee has told me that his book has been introduced in the schools in those various States.

5130

x Q. 317. Is that all you know upon that subject. A. I think I saw—in fact, I am positive that I saw a book which is gotten out by the Chicago and Illinois schools—that is, they have all the books that are adopted in the schools—that the Laird & Lee book was mentioned.

x Q. 318. And is that all you know upon that subject? A. I think so.

5131

x Q. 319. What was the date of those several adoptions or supposed adoptions? A. I don't know.

x Q. 320. Do you know whether they still subsist or have been since rescinded? A. That I don't know; but I think they still exist.

MR. HALE: The objection to the direct questions and the testimony as to these adoptions is again renewed, and motion is made to strike out the answers upon the ground that the witness has fully shown same to be mere hearsay, and not facts within his knowledge.

5132

x Q. 321. Is the information which you have testified to in regard to the use of Laird & Lee's

5133

(Arthur T. Leon—Cross.)

books in certain named cities the same as that to which you have testified as to states? A. Yes, sir.

MR. HALE: The same objection and motion is made to that part of this witness's deposition.

5134

x Q. 322. You have referred to a list of dictionaries using the name Webster in their titles, which were not published by the Merriam Company. Have you any knowledge or information as to the fact that some of these dictionaries are the same books under different titles?

MR. CARROLL: Objected to as assuming a state of facts not proven.

A. I absolutely know that those different dictionaries are printed from different plates.

5135

x Q. 323. How about the literary contents? Don't you know that some dictionaries named have the same identical literary contents? A. I do not.

x Q. 324. Don't you know that some of the Laird & Lee dictionaries referred to as "common school edition," "high school edition," and so forth, are the same identical books, merely printed in a different size; but the literary contents being identical? A. I do not.

5136

x Q. 325. You don't deny that this is a fact, though? A. I do not.

x Q. 326. You simply don't know? A. I never examined them close enough for that. I have seen all the books.

x Q. 327. Can you quote the title pages and all the inscriptions upon the various dictionaries named? A. No.

(Arthur T. Leon—Cross.)

5137

x Q. 328. Do you know what connection or relation there is between the several dictionaries named, and any dictionary of Noah Webster? A. I don't know anything about it.

x Q. 329. Do you know that some of the dictionaries named are in litigation in regard to the use of the name Webster thereon? A. I understood the Syndicate is.

x Q. 330. How about the Saalfeld Publishing Company's dictionaries? A. I understand that litigation was settled.

5138

x Q. 331. You know there had been a litigation for some years? A. Yes, I so understood.

x Q. 332. You don't know, then, that that litigation is still pending? A. No.

x Q. 333. Also the dictionaries named are dictionaries of the smaller class, as small as or smaller than your so-called Webster's New Century Dictionary? A. Yes, sir.

5139

x Q. 334. You have referred to several Webster's Unabridged Dictionaries published about or since the year 1890 by publishers other than Merriam. Were those dictionaries photographic reprints of the 1847 edition? A. I don't know.

x Q. 335. Or copyright editions? A. I don't know.

x Q. 336. What do you know about that? A. I don't know anything about that except I have seen the books.

5140

x Q. 337. Have you ever sold them? A. Some years ago I have.

x Q. 338. At what price did you sell them? A. Different prices.

x Q. 339. What was the range of prices? A. Well, I think from fifty cents up to a dollar and sixty-five cents.

(*Arthur T. Leon—Cross.*)

5141

x Q. 340. For the large unabridged dictionary?

A. Yes.

x Q. 341. Did you ever sell any for less than fifty cents? A. No, I think not.

x Q. 342. What is your best information and recollection? A. No.

x Q. 343. Never less than fifty cents? A. No, I don't think so.

5142 x Q. 344. Did you ever sell a job of them at bargain prices? A. Yes; I have sold an edition of the Merriam Company's which I bought at an auction sale for a cheap price. Not less than fifty cents, however.

x Q. 345. I am referring to the large dictionaries that you referred to, printed or published by concerns other than Merriam. A. No.

5143 x Q. 346. You have spoken of a dictionary published by the Monarch Publishing Company. Have you any knowledge or information as to the title of that dictionary? A. No, I don't remember it.

x Q. 347. Don't you know that it was one of the Saalfeld Dictionaries, published under another title? A. No, I don't.

x Q. 348. Do you know that Saalfeld publishes his large dictionary under several different titles?

MR. CARROLL: I object to that as incompetent, and immaterial.

5144

A. Yes, I have read two titles, one for the trade and one for the subscription trade.

x Q. 349. Have you ever heard of any other titles of that book.

MR. CARROLL: Same objection.

(Arthur T. Leon—Cross.)

5145

A. I just answered that; two titles.

x Q. 350. I say, have you ever heard of any other titles of that book? A. No.

x Q. 351. You don't know that is published under six different titles? A. No, I do not.

x Q. 352. Are all your dictionaries sold outright to your customers, or are some of them handled on consignment? A. No; none of them handled on consignment.

5146

x Q. 353. Did you buy any complete books or sheet stock from Louis Klopsch when you bought the plates of your dictionary from him? A. No, sir.

x Q. 354. All the dictionaries then, which you issued, were printed yourselves from the plates which you purchased? A. Yes, sir.

x Q. 355. Has the defendant any objection to incorporating in the warning notice which it now uses upon its book and in its advertisements, as stated by you, a statement that your dictionary is based upon the 1847 edition of Webster's Unabridged Dictionary?

5147

MR. CARROLL: I object to that as irrelevant and immaterial.

A. I don't know why we should put that notice in, as we have already put in the notice, "This dictionary is not published by the original publishers of Webster's Dictionaries or their successors"; and we have done this to distinguish our book from the Merriam book, as we want to give them every benefit or doubt, and the only purpose such a notice could serve would be to distinguish books of different publishers, and therefore it would be superfluous. Furthermore, it don't seem to be absolutely true, for the simple reason that all

5148

(*Arthur T. Leon—Cross.*)

5149

matter taken and used in small dictionaries is taken alike from editions of Webster's dictionary of 1828, 1841, 1847 and 1864, and the matter contained in the small dictionaries is practically the same, that is, the matter contained in all these four dictionaries is practically the same as embodied in the small dictionaries. Our dictionary would contain as much matter of the 1828 and 1841 and 1864 editions, as of the 1847 edition.

5150

x Q. 356. Don't you know that Webster's dictionary of 1864 was protected by copyright at the time your dictionary was first published in 1904? A. Well, evidently, 1904—forty-two years would make in 1906.

x Q. 357. You don't seem to think, then, your dictionary contains matter taken from the copyright edition of 1864? A. Well, subsequent editions probably did.

5151

x Q. 358. You mean the few stray words that you added? A. We didn't publish it since the dictionary in 1906. For that reason any words which we took since we published Webster's New Century Dictionary might have come from the 1864 edition just as well.

5152

x Q. 359. Have you any reason to believe that anything contained in your dictionary as published in the year 1911 contained any matter taken from the 1864 edition of Webster's dictionary? A. We took all dictionaries that were open, and how many words were taken out of them I don't know—out of the 1864 edition, I don't know.

x Q. 360. As a matter of fact, have there been as many as fifty words added to the plates of the Crown dictionary? A. I don't remember.

x Q. 361. You can ascertain that fact, can you not? A. If the records are still there. It might be.

(*Arthur T. Leon—Re-Direct.*)

5153

x Q. 362. And the words that were added were new words which have come into the language in recent years, were they not? A. Not altogether.

x Q. 363. Name some that were not such? A. I don't remember exactly which ones.

x Q. 364. Can you name any?

MR. CARROLL: I object to that on the ground that this witness has already testified that he did not have particular control of the editorial part of the business. 5154

MR. HALE: I will answer that. The witness has assumed to state in general terms certain changes which he claims might have been made; and the desire is to obtain such knowledge as he has upon the subject, and to ascertain the limits of his knowledge.

A. I don't remember.

x Q. 365. Did you go to Chicago for the purpose of getting into communication with Mr. Roe in connection with this dictionary litigation? A. I did. 5155

x Q. 366. Did you send an attorney to Chicago for the same purpose, or employ one there? A. I did not.

RE-DIRECT EXAMINATION by Mr. Carroll:

Re-D. Q. 367. When you went to Chicago for the purpose of seeing Mr. Roe, did you find Mr. Roe? A. No, sir. 5156

Re-D. Q. 368. Do you remember ever having seen Mr. Roe within the last five years? A. No, sir.

Re-D. Q. 369. What would your so called advertising register contain with reference to Webster's dictionaries in addition to the matter con-

5157

(Arthur T. Leon—Re-Direct.)

tained in the catalogue which is an exhibit in this case?

MR. HALE: I object to that as incompetent, irrelevant and immaterial and as secondary, it appearing that the defendant has in its possession the advertising register in question, and defendant has been called upon to produce the same.

5158

A. I don't remember any.

Re-D Q. 370. What advertising did you do in connection with your Webster's dictionary? A. Not any outside of circulars and catalogues.

Re-D Q. 371. One of the catalogues which you used is that already in evidence, isn't it? A. Yes.

5159

Re-D Q. 372. The circulars which you referred to—what further matter did they contain except that in this catalogue? A. Nothing.

Re-D Q. 373. Did you have any control whatever over the advertising of your customers? A. No, sir.

Re-D Q. 374. Did you supply them with any material for inserting a trade advertising except that which is contained in this catalogue and your catalogue? A. No, sir.

5160

Re-D Q. 375. What information have you concerning the date of the manufacture of the plates of the Crown Dictionary which you purchased? A. I understood they were manufactured in 1904.

Re-D Q. 376. Have you had these plates examined by plate makers? A. Yes.

Re-D Q. 377. What have they told you about them?

MR. HALE: I object to that as calling for hearsay, and as irrelevant and immaterial.

(*Arthur T. Leon—Re-Direct.*)

5161

A. Well, a plate maker came into our office and he said he made the plates of the Crown dictionary and wanted to know if he could do some work for us.

Re-D Q. 378. Do you remember the name of the plate maker? A. No, I don't remember. He was in Cleveland and afterwards moved to Jersey.

Re-D Q. 379. Do you know where he is now? A. No, I do not.

5162

Re-D Q. 380. Did he tell you he made the plates of the Crown Dictionary in 1904?

MR. HALE: I object to that as calling for hearsay and as no evidence of the fact.

A. Yes.

Re-D Q. 381. In your cross examination you have testified that in the year 1907, you changed the name of your dictionary from "Students New Century Dictionary" to Webster's New Century Dictionary." Did you find it more easy or more difficult to sell the dictionary under the name of "Webster's New Century?"

5163

MR. HALE: I object to that as incompetent, irrelevant and immaterial, as calling for a conclusion of the witness, and because all the circumstances attending the sale of the books under the several titles have not been shown or even assumed in the question.

5164

A. I found it more hard to sell it under the name of Webster's, probably on account of there were so many Webster's dictionaries in the market, and competition was keener.

Re D Q. 382. Why didn't you change the name

5165

(Arthur T. Leon—Re-Direct.)

of the book again to "Students New Century Dictionary" when you discovered that it was a disadvantage to call it Webster's?

MR. HALE: I object to that as irrelevant and immaterial.

5166

A. Well, it took us two or three years to find out that our sales were falling off, and we were just about to change that when the enormous advertising of the Syndicate Publishing Company stimulated the sale of Webster's dictionary, by which all publishers of Webster's dictionary profited.

Re-D Q. 383. When you returned from Springfield in October, 1911, and conferred with your attorneys, and were told about the details of the Ogilvie decision, did your attorneys tell you that your case was exactly like the Ogilvie case?

5167

MR. HALE: I object to that as irrelevant and immaterial.

A. No, they told us that our case was different from the Ogilvie case.

Re-D. Q. 384. In what way was it different?

5168

A. Inasmuch as Ogilvie was not satisfied with using the word "Webster", but had put in other words which might deceive the public into buying books which have been established by the Merriam Company, and notwithstanding that, our attorneys did not think it necessary to put in the notice in the book, "This dictionary is not published by the original publishers of Webster's dictionary or their successors," my partner and I decided to give the Merriams the benefit of every doubt and insert the notice in this dictionary.

Re-D. Q. 385. Did you have at that time any expectations that the Merriams would bring suit against you?

(*Arthur T. Leon—Re-Cross.*)

5169

MR. HALE: I object to that as incompetent, irrelevant and immaterial and as a repetition of a question already asked on direct examination.

A. No sir.

Re-D. Q. 386. Did the Crown dictionary which you purchased from Louis Klopsch form a part of another work which was being published by the Christian Herald?

5170

MR. HALE: I object to that as irrelevant and immaterial.

A. I think so.

Re-D. Q. 387. Do you know what that work was called? A. The Crown Encyclopedia.

Re-D. Q. 388. Do you know whether or not it was for that reason that Louis Klopsch didn't want you to continue calling the book the Crown Dictionary? A. I think so.

5171

RE-CROSS EXAMINATION by Mr. Hale:

Re-x Q. 389. When you went to Chicago you located Mr. Roe as being in the employ of Laird & Lee, did you not? A. No; I understand that he was not in the employ of Laird & Lee.

Re-x Q. 390. What did you ascertain in regard to his employment and location? A. I understood he only worked for them at times.

5172

Re-x Q. 391. You got into communication with Mr. Lee of that firm? A. I did.

Re-x Q. 392. You have referred to a conference with your attorneys shortly before this suit was brought. Did your attorneys tell you that the Supreme Court in the Singer case has laid down the principle that the use of the name which has

5173

(Arthur T. Leon—Re-Cross.)

acquired a secondary meaning without an accompanying adequate distinguishing statement in itself constitutes an artifice calculated to deceive?

A. I don't think so.

Re-x Q. 393. Before this suit was brought had you not had a conference with complainant's counsel? A. I did.

5174

Re-x Q. 394. And was not the matter then discussed as to ways of avoiding litigation? A. Counsel told us that we have to drop the name Webster. We said we would if our attorneys advised us that it was necessary.

5175

Re-x Q. 395. You knew then, that before you went to Europe, that the matter was in the hands of complainant's Counsel? A. I did not know it was in the hands of the counsel, except that in that interview with the Merriams they thought that we had better consult with their counsel as they did not want to do anything unless advised by their counsel.

Re-x Q. 396. You have stated that the Crown dictionary was published as part of a work called the Crown Encyclopedia? A. It was.

Re-x Q. 397. Also published separately as the Crown dictionary, was it not? A. I don't know.

5176

Re-x Q. 398. It has been so testified in this case and you have no reason to doubt it, have you? A. It might have sold. I don't know that it was published separately. It might have been sold separately.

Re-x Q. 399. I presume Mr. Roe knows better than any other person the source of the materials used in the compilation of the Crown dictionary by him? A. I don't know if he knows better than any other person. Other language experts probably can dissect the dictionary.

(*Arthur T. Leon—Re-Cross.*)

5177

Re-x Q. 400. Is it your idea that the dictionary is founded upon the prior dictionary with which it is most nearly identical? A. I don't know what you mean by that.

Re-x Q. 401. Do you mean to say its source and origin can be determined by comparison with existing books at the time it was compiled? A. Probably can—naturally. Any dictionary can be.

Re-x Q. 402. You mean by that that its source and origin will be determined by the similarities which occur between it and the dictionaries with which it is compared? A. Between the definitions—between the similarity of the definitions of the dictionaries.

5178

Re-x Q. 403. I presume there is a general similarity between corrected definitions of the same words in different dictionaries. There is no doubt about that, is there? A. Different lexicographers use different definitions.

5179

Re-x Q. 404. Is there any commercial or business reason for objecting to specifying by dates the editions of Webster's dictionary upon which your book is founded if it is founded upon any Webster's dictionary? A. What do you mean by that?

Re-x Q. 405. I mean, from your standpoint as a business man and publisher? A. You mean the date of the dictionary?

Re-x Q. 406. The editions are usually specified by the dates, the year in which they appear? A. What was that question, now?

5180

Re-x Q. 407 (repeated as follows): Is there any commercial or business reason for objecting to specifying by dates the edition of Webster's dictionary upon which your book is founded, if it is

5181

(Arthur T. Leon—*Re-Cross.*)

founded upon any Webster's dictionary? A. No, I think not. Of course, the general public, in buying the dictionary would naturally suppose that the main part of the dictionary would be from forty to fifty to a hundred years old, and if it had been upon the title page, "based upon the 1847 edition of Noah Webster, but revised and brought up to date by the most eminent English and American authorities," it would rather add to the sale than hurt it, provided the public got the book they wanted.

5182

By Mr. Carroll:

Re-x Q. 408. It is alleged in the twenty-fifth paragraph of defendant's answer that in the publication of your dictionary under the title of Webster's New Century Dictionary, you have at all times indicated on title pages and on the cover of the dictionary the true origin and identity of the dictionary. Is that a correct statement? A. It is correct with one exception, that we published one edition in which we left our name off the cover for the reason that we wanted to reduce the cost of manufacture in order to meet competition, which was very keen on other similar dictionaries.

5183

Re-x Q. 409. Did all other editions of the book except that one have your name on the back of the outside cover? A. Previous to that and after that, and it is customary with all publishers to put their name on the back of books.

5184

By Mr. Hale:

Re-x Q. 410. What is the cost per volume of the publication of the book, in the form filed with the bills?

MR. CARROLL: I object to that.

(*Herman Schultz—Direct.*)

5185

A. I refuse to answer.

Re-x Q. 411. I will ask you the question—in which the name is left off for the reasons stated by you? A. It reduces the cost to leave the name off, because that is gold leaf, and it costs money.

Re-x Q. 412. I will repeat the question: What is the cost of the manufacture of that edition of the book? A. I will refuse to answer.

DEPOSITION CLOSED.

5186

Signature of this witness waived by consent.

IT IS HEREBY STIPULATED by and between the counsel for the respective parties that the signatures of witnesses to all depositions taken stenographically be and the same are hereby waived.

Adjourned to June 11th, 1912, at 12 o'clock M.

5187

NEW YORK, June 11th, 1912.
12:00 M.

Met pursuant to adjournment.

Present: Counsel as before.

HERMAN SCHULTZ, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

5188

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. What is your age? A. My age is fifty-three.

(Herman Schultz—Direct.)

5189

Q. 2. Residence? A. Sixty-four Rutland Road, Flatbush.

Q. 3. What is your occupation? A. Salesman.

Q. 4. Have you, at some period of your life, been engaged in the securing of subscriptions for magazines? A. Yes.

5190 Q. 5. At about what period was that? A. Oh, for about eighteen or twenty years. I was employed for thirty-five years by the Orange Judd Company. They are now on Fourth Avenue, Springfield, Mass.

Q. 6. Did you in the course of this business distribute premiums of various kinds? A. Yes; used to purchase them by the thousands and give them away as premiums.

Q. 7. Among those premiums were there Webster's dictionaries? A. Yes.

5191 Q. 8. Do you remember any of the publishers of those Webster's dictionaries? A. No, I don't remember the publishers—I don't remember, sir. I might say that I remember the first dictionaries were offered way back in the eighties, by the concern known as the World Publishing Company of Nassau Steet at that time.

Q. 9. Were those Webster's dictionaries? A. They were Webster's dictionaries; yes, sir.

Q. 10. And that was back in the eighties? A. Yes; back in the eighties.

5192 Q. 11. Can you fix the date any more exactly? A. No, I could not.

Q. 12. Was it 1885, do you think? A. I could not think—I know it was in the eighties. I could not recall it now positively.

Q. 13. Did you distribute many of those dictionaries? A. Yes, sir, thousands of them.

(Herman Schultz—Direct.)

5193

Q. 14. Have you recently made an investigation of the public understanding of the word "Webster"? A. Yes, sir.

Q. 15. What was your method of procedure in that investigation? A. I visited eight cities.

Q. 16. What cities were they? A. Wilmington, Delaware; Philadelphia, Trenton, New Brunswick, Morristown, Brooklyn, Jersey City and Newark.

5194

Q. 17. What was your method of investigation in those towns? A. I followed the instructions. I made a systematic canvass from store to store. When I was not turned down I got their replies to my questions.

Q. 18. What people did you approach? A. Storekeepers—general storekeepers, lawyers and doctors, as it may be.

Q. 19. How did you select the persons whom you questioned? A. Personally; and in the City of Brooklyn and in Trenton and in Newark, to expedite matters, I had a brother introduce me to some of his acquaintances—not all—vouching that I was all right, and to answer the questions to the best of their knowledge as I might ask them.

5195

Q. 20. Did you know any of these people beforehand? A. Never saw any of these people beforehand.

Q. 21. Did you indicate in any way before you examined them what the purpose of your examination was? A. No, sir.

5196

Q. 22. Did you in any way indicate to them what answers you expected to get to the questions? A. No, sir.

Q. 23. Did you make a complete list of all the persons examined? A. Yes.

5197

(Herman Schultz—Direct.)

Q. 24. How did you make that list? A. On the cards issued for the purpose, publishers' cards.

Q. 25. What do you mean by "cards issued for the purpose"? A. Explanation pads.

Q. 26. What were those pads? A. On which there were lines to insert the answer to those questions that were asked.

Q. 27. What did you write on those pads?

5198

MR. HALE: Just one moment. This question and this entire line of examination is objected to as incompetent, irrelevant and immaterial.

A. I wrote down the replies the parties made.

Q. 28. Did you write the name of each person?

A. The name of each person questioned, yes, sir.

Q. 29. Did you get the name of each person questioned? A. Yes.

5199

Q. 30. Did you write down the occupation of each person? A. Yes.

Q. 31. Did you also write down immediately after the answers were given the answers which each one of the persons questioned made? A. Yes.

Q. 32. Did you before going out on this tour of investigation receive a letter of instructions?

A. Yes, sir.

Q. 33. I show you a letter. Is that such a letter? A. That is the letter; yes.

5200

MR. CARROLL: I will offer that in evidence.

MR. HALE: The letter is objected to as incompetent, irrelevant and immaterial, as relating to a transaction between defendant's counsel and defendant's agent, and in no manner binding upon the complainant.

(*Herman Schultz—Direct.*)

5201

(Said letter is set forth in full as follows).

“GOULD & WILKIE,
COUNSELLORS AT LAW,
No. 2 Wall Street,
New York.

May 29th, 1912.

MR. H. SCHULTZ,
64 Rutland Road,
Brooklyn, N. Y.

5202

DEAR SIR:

In connection with your investigation for the Syndicate Publishing Company please remember that your testimony can only be of value to the Court in determining what the term ‘Webster’s Dictionary’ means to the general public, if you obtain your special knowledge and information in an absolutely fair and impartial manner. Be careful to ask the questions which have been prepared for you exactly in the order indicated and in the same exact words in each case. If possible obtain the answers from persons picked at random in the various towns visited without explaining the purpose of the question. In other words, do not in any way suggest to them the kind of answer which you want them to make. If necessary you can say you are obtaining statistics concerning the popular understanding of the word ‘Webster.’ In each case write down at once the name, address and occupation of the person questioned and the answer to each question. Include in your record without exception the answers of all of the persons whom you question, as well as those who answer unfavorably as those who answer favorably.

5203

5204

5205

(Herman Schultz—Direct.)

In truth, your purpose is to collect accurate statistics for the Court as to the meaning which the general public attaches to the word 'Webster' in the title of a dictionary.

Very truly yours,

GOULD & WILKIE,
By Lauren Carroll."

5206

Q. 34. Did you follow the instructions set forth in this letter exactly? A. Yes, sir.

Q. 35. How many person did you interview in this investigation? A. I could not tell you how many I interviewed, but I can tell you how many answers I got.

Q. 36. How many out of those whom you interviewed consented to answer these questions? A. 316 in all.

5207

Q. 37. Did those 316 include everyone who consented to answer the questions? A. Everyone, yes.

Q. 38. Have you included among those 316 all those who might be considered unfavorable to the Syndicate Publishing Company as well as those who might be considered favorable? A. Just as I received the replies, the answers I recorded. There were no omissions.

5208

Q. 39. What were the questions which you asked these 316 persons?

MR. HALE: I object to the as incompetent, irrelevant and immaterial, and as not binding upon the complainant.

A. The first question: Do you know who is the publisher or who are the publishers of Webster's dictionaries?

(*Herman Schultz—Direct.*)

5209

2. When you hear or see the name Webster on a dictionary, does it indicate to you a dictionary gotten out by any particular publisher or at any particular place?

3. Do you know any city or cities where any Webster's dictionaries are published?

4. Do you know of any series of succeeding rewritings of Webster's dictionaries gotten out by any one publisher?

5210

5. Who do you think wrote the definitions and fixed the spelling of the words to be found in the Webster's dictionaries you have known about?

6. When do you think those definitions were written and that spelling fixed?

Q. 40. From your experience as a distributor of dictionaries and from our special experience in the recent investigation, will you state whether or not the general public knows who is the publisher or who are the publishers of Webster's dictionaries? A. Well, I found in my canvas —

5211

Q. 40. Just answer that question without reference to any record that you may have, first.

MR. HALE: I object to it upon the ground that the witness has not been qualified to answer such a question.

Q. 41. (Repeated as follows): From your experience as a distributor of dictionaries and from your special experience in this recent investigation, will you state whether or not the general public knows who is the publisher or who are the publishers of Webster's dictionaries? A. They don't know.

5212

Q. 42. Out of the persons whom you questioned, how many answered in the negative to the first question?

5213

(Herman Schultz—Direct.)

MR. HALE: I object to it as incompetent, irrelevant and immaterial and calling for a transaction had with an agent of defendant's not in the presence of the complainant, and not in any way binding upon the complainant, and also as calling for pure hearsay in a matter which is not part of the *res gestae* of any relevant act, fact or declaration.

5214

A. Three hundred.

Q. 43. What did the other sixteen answer? A. Question No. 1—Funk & Wagnall, Merriam, Lippincott, Appleton.

5215

Q. 44. From your experience as a distributor of dictionaries and from your experience in this recent special investigation, will you state whether or not the general public when they hear or see the name Webster on a dictionary, understand that it is a dictionary gotten out by any particular publisher or at any particular place? A. They don't know.

Q. 45. Out of the 316 persons whom you examined, how many answered the second question in the negative? A. Three hundred and four.

5216

Q. 46. From your experience as a distributor of dictionaries, and from your experience in this recent investigation, will you state whether or not the general public know any city or cities where any Webster's dictionaries are published? A. They do not.

Q. 47. Out of the 316 persons questioned by you, how many answered question No. 3 in the negative? A. 277.

(It is stipulated that this entire line of examination, including questions as to

(Herman Schultz—Direct.)

5217

questions asked by the witness and answers given by the persons interrogated, is all subject to the objection to the same as incompetent, irrelevant and immaterial, that it calls for hearsay and relates to transactions in no way binding upon the complainant, and is not part of the *res gestae* of any relevant act, fact or declaration; and this objection need not be repeated to any questions along this line.)

5218

Q. 48. What did the remainder, 29, answer to that question? A. In Connecticut, Ohio, New York, Philadelphia, Chicago, Boston, Springfield.

Q. 49. From your experience as a distributor of Webster's dictionaries, and from your experience in the recent investigation made by you, will you state whether or not the general public knows of any series of succeeding rewritings of Webster's dictionaries gotten out by any one publisher?

5219

MR. HALE: This question is specially objected to on the ground that the witness has not been duly qualified as an expert to answer or to give his opinion upon such subject.

A. No.

Q. 50. Out of the 316 persons questioned by you, how many answered question No. 4 in the negative? A. 308.

5220

Q. 51. From your experience as a distributor of Webster's dictionaries, and from your experience in this recent investigation, will you state what person or persons the general public thinks wrote the definitions and fixed the spelling of the

5221

(Herman Schultz—Direct.)

words to be found in the Webster's dictionaries, which they have known about? A. Ten years each; almost obsolete.

Q. 52. Now, wait a minute. That answer is not responsive. And I move that it be stricken from the record and the question be re-read.

5222

Q. 53. (Repeated as follows): From your experience as a distributor of Webster's dictionaries, and from your experience in this recent investigation, will you state what person or persons the general public thinks wrote the definitions and fixed the spelling of the words to be found in the Webster's dictionaries which they have known about?

MR. HALE: Complainant's Counsel inquires what papers the witness is consulting in making his answers to this line of examination.

5223

MR. CARROLL: The defendant's Counsel answers that they are papers which the witness has prepared, summarizing the results of his investigation, and containing statistics which he is unable to carry in his memory. He therefore has the paper for the purpose of refreshing his memory.

5224

MR. HALE: There is no objection to the witness so doing provided the cards upon which he embodied the immediate results of his investigation, and which these papers summarize are offered in evidence before the conclusion of his examination.

MR. CARROLL: Pursuant to this objection and request, Defendant's Counsel states that he will spread upon the record the cards.

(*Herman Schultz—Direct.*)

5225

Q. 54. (Repeated). A. Webster; Noah or Daniel Webster; Webster and others, don't know; indefinite.

Q. 55. Out of the 316 persons questioned by you, how many indicated by their answers to question No. 5 that they believed some person named Webster, either Daniel or Noah, had written the definitions and fixed the spelling of the words found in the Webster's dictionaries which they have known about? A. 185.

5226

Q. 56. How many indicated by their answers to question 5, that they thought Webster had had a large part to do with the writing of the definitions and the fixing of the spelling of the words found in the Webster's dictionary which they have known about? A. 35.

Q. 57. Are these thirty-five in addition to the 185 which you have already mentioned? A. Yes, sir.

5227

Q. 58. What did the rest of the persons examined by you answer to this question 5? A. 50 of them—50 additional answered "don't know," and the balance, 46, indefinite.

Q. 59. What do you mean by indefinite? A. All kinds of remarks. There was "students of rhetoric" and all that business; not any of them alike, but all different.

Q. 60. From your experience as a distributor of dictionaries and from your special examination recently made of the public understanding of the word "Webster," will you state when the general public thinks that the definitions in the Webster dictionaries they have known about were written and when the spelling was fixed? A. They did not know. 218 of the 316 answered "long ago;" six "recently;" and 15 "don't know."

5228

5229 *Exhibit: Produced by Witness Schultz.*

Q. 61. I show you 316 cards and ask you if those are the cards which you used in your special investigation recently made (handing a bundle of cards)? A. Yes, sir.

Q. 62. Are these the cards which you mentioned in your direct examination? A. Yes, sir.

Q. 63. Do they contain all of the answers of each one of the persons who would give you any answer to the questions? A. Yes.

5230 Q. 64. Did you in each case write down the whole of the answer without changing it in any way? A. Yes, sir.

MR. CARROLL: I offer the cards in evidence.

MR. HALE: The cards are objected to upon the grounds of the general objection above stated and reserved by stipulation.

(Marked in evidence "Defendants' Exhibit Copy of Cards furnished by witness Schultz, J. A. Exr., June 11, 1912.")

5231

The text of said cards is printed at this point by consent and is as follows:

The persons, their addresses, occupations and the answers which each gave to the question are as follows:

1. J. P. Gallagher, 141 Market Street, Wilmington, Del., Hats.

5232

Question 1. Funk & Wagnall.

Question 2. Chicago.

Question 3. Chicago.

Question 4. Almost obsolete.

Question 5. Noah Webster.

Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

5233

2. Chas. Cover, 429 Malbourn Street, Brooklyn,
N. Y., Painter.

- Question 1. No.
- Question 2. No.
- Question 3. New York City.
- Question 4. Funk & Wagnall.
- Question 5. Webster.
- Question 6. Long ago.

3. J. H. Keeley, 455 48th Street, Brooklyn, N. Y.,
Builder. 5234

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. Funk & Wagnall.
- Question 5. Noah Webster and others.
- Question 6. 1840.

4. C. A. Barbier, 42 Clinton Street, Newark,
N. J., Law Book. 5235

- Question 1. Funk & Wagnall.
- Question 2. No.
- Question 3. New York.
- Question 4. No.
- Question 5. Several Authors.
- Question 6. About 1850.

5. J. Michaels, 18 Church Street, New Bruns-
wick, N. J., Millinery.

5236

- Question 1. No.
- Question 2. Funk & Wagnall.
- Question 3. New York.
- Question 4. No.
- Question 5. Presume Webster.
- Question 6. Long ago.

5237 *Exhibit: Produced by Witness Schultz.*

6. Wm. H. Hansen, 307 Hoyt Street, Brooklyn, N. Y., Druggist.

Question 1. No, think Funk & Wagnall.

Question 2. Don't know.

Question 3. No.

Question 4. No.

Question 5. Originated by Noah Webster.

Question 6. Most part of the book long ago.

5238 7. Irwin C. Blean, 13 Kent St., Trenton, N. J., Bookkeeper.

Question 1. G. & C. Merriam.

Question 2. G. & C. Merriam.

Question 3. Phila., N. Y., Mass.

Question 4. G. & C. Ed.

Question 5. Noah Webster.

Question 6. Change from time to time.

5239 8. Randolph Burgess, 583 Flatbush Ave., Brooklyn, N. Y., Real Estate.

Question 1. Merriam & Co.

Question 2. No have in my possession
National Press Assn.

Question 3. Not to my knowledge.

Question 4. No other exception on the
above.

Question 5. Always has been ascribed the
work of Dr. Webster.

5240 Question 6. Period of 40 or more years ago.

9. J. J. Propy, 212 E. Hanover St., Trenton, N. J., Druggist.

Question 1. Merriam.

Question 2. No.

Question 3. Ohio & Mass.

Question 4. Dozens.

Exhibit: Produced by Witness Schultz.

5241

Question 5. Webster & others.

Question 6. Years ago.

10. N. Y. Vreeland, 2164 Boulevard, Jersey City, N. J., Banking Dept.

Question 1. No.

Question 2. Merriam & Co.

Question 3. Springfield, Mass.

Question 4. No.

Question 5. All sorts of claims.

5242

Question 6. Many years ago.

11. Saml. R. Baker, 251 Market Street, Newark, N. J., Printer.

Question 1. No.

Question 2. G. & C. Merriam of Conn.

Question 3. Conn.

Question 4. No.

Question 5. No end of authors, compilation.

5243

Question 6. Long ago.

12. Ezra Baldwin, 66 Rutland Road, Foster, Salesman, Brooklyn, N. Y.

Question 1. When I went to school, Merriam.

Question 2. Could not say, anyone can make the book.

Question 3. No.

Question 4. No.

5244

Question 5. Noah Webster.

Question 6. 75 to 100 years ago.

13. J. Frank Greene, 42 Rutland Road, Brooklyn, N. Y., Broker.

Question 1. G. C. Merriam, Springfield, Mass. Most anybody else, as I know others.

5245

Exhibit: Produced by Witness Schultz.

- Question 2. No.
- Question 3. Springfield and elsewhere.
- Question 4. Never heard of such a thing.
- Question 5. Noah Webster.
- Question 6. More than forty years ago
"originally."

14. Dr. Cornwall, 1218 Pacific St., Brooklyn,
N. Y., M. D.

5246

- Question 1. Merriam & Co.
- Question 2. Not necessarily.
- Question 3. Springfield, Mass.
- Question 4. No.
- Question 5. Noah Webster, from earlier
works.
- Question 6. About 1820.

15. Dr. Lippald, 197 St. Nicholas Ave., Dr.

5247

- Question 1. Lippincott's.
- Question 2. No.
- Question 3. Phila., Pa.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Long ago.

16. Dr. B. Kahn, 194 Ross St., Brooklyn, N. Y.,
M. D.

5248

- Question 1. Appleton & Co.
- Question 2. No.
- Question 3. Phila., Pa.
- Question 4. No.
- Question 5. Johnson before Webster.
- Question 6. 1778.

Exhibit: Produced by Witness Schultz.

5249

18. Geo. J. Litterse, 52 Church St., New Brunswick, N. J., Hats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. New York.

Question 5. No.

Question 6. Ten years ago.

19. Edward Powers, 586 Henry Street, Brooklyn, N. Y., Foreman Shipbuilder, Robin Dry Dock.

5250

Question 1. No.

Question 2. No.

Question 3. I suppose in N. Y.

Question 4. No.

Question 5. Webster, of course.

Question 6. I don't know.

20. J. W. Stewart, 22 Court Street, Brooklyn, N. Y., E. Railroad.

5251

Question 1. No.

Question 2. No.

Question 3. Phila., Pa.

Question 4. No.

Question 5. No one person.

Question 6. Changed from time to time.

21. H. B. Zimmerman, 44 Church St., New Brunswick, N. Y., Mfg. Hair Goods.

5252

Question 1. No.

Question 2. No.

Question 3. New York City.

Question 4. No.

Question 5. By different persons.

Question 6. Changes right along.

5253

Exhibit: Produced by Witness Schultz.

21. Sieg Baron, Trenton, N. J., Wholesale Liquors.

Question 1. No.

Question 2. No.

Question 3. New York City.

Question 4. No.

Question 5. No.

Question 6. Common usage.

5254

22. Emil Millke, 222 W. Hanover St., Trenton, N. J., Restaurant.

Question 1. No.

Question 2. Webster.

Question 3. Ohio.

Question 4. No.

Question 5. Webster & Professors.

Question 6. 1910.

5255

23. Chas. Drummond, 124 Temple Street, Trenton, N. J., Clothing Stock Clerk.

Question 1. No.

Question 2. No.

Question 3. Phila.

Question 4. No.

Question 5. Webster.

Question 6. Years ago.

5256

24. Edward McCann, 231 Lincoln Road, Brooklyn, N. Y., Asst. Supt.

Question 1. No.

Question 2. No.

Question 3. Boston, Mass.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

5257

25. Wm. A. Muldoon, 832 Flatbush Ave., Brooklyn, N. Y., Dry Goods.

Question 1. No.

Question 2. No.

Question 3. New York. ,

Question 4. No.

Question 5. Webster compilation.

Question 6. Long ago.

26. Chas. J. Kreinbrink, 26 Court St., Brooklyn, N. Y., Architect. 5258

Question 1. No.

Question 2. No.

Question 3. Some published in New York.

Question 4. No.

Question 5. Daniel Webster.

Question 6. Long ago.

27. Fred Zimmerman, 501 Rodgers Ave., Brooklyn, N. Y., Druggist. 5259

Question 1. No.

Question 2. No.

Question 3. Imagine New York.

Question 4. No.

Question 5. Danl. Webster.

Question 6. Can't fix the year. Before my time.

28. John Giller, 122 So. 1st St., Brooklyn, N. Y., Clerk. 5260

Question 1. No.

Question 2. No.

Question 3. New York City.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5261 *Exhibit: Produced by Witness Schultz.*

29. T. A. Kelly, 730 Flatbush Ave., Brooklyn, N. Y., Real Estate.

Question 1. No.

Question 2. No.

Question 3. New York City.

Question 4. No.

Question 5. Daniel Webster.

Question 6. Many years ago.

5262 30. H. S. C. Folk, 921 Market St., Wilmington, Del., Sperry Hutchinson.

Question 1. No.

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Noah Webster.

Question 6. Some time ago.

5263 31. F. E. Boeckler, 94 Emmett St., Newark, N. J., Restaurant.

Question 1. No.

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Webster.

Question 6. Many years ago.

32. W. V. Hann, 122 Pennsylvania Ave., Newark, N. J., Salesman.

5264

Question 1. No.

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Dan'l Webster.

Question 6. Long before my time.

Exhibit: Produced by Witness Schultz.

5265

33. Thos H. Irwin, 317 Can Street, Trenton, N. J., Clerk.

Question 1. Several. No.

Question 2. No.

Question 3. Phila.

Question 4. Last two or three years by several.

Question 5. Worlds Lexicographer.

Question 6. Long ago.

5266

34. F. W. Reynolds, 460 So. Olden, Trenton, N. J., Clerk Bell Telephone.

Question 1. No.

Question 2. Chicago.

Question 3. No.

Question 4. No.

Question 5. A number of people.

Question 6. Years ago.

35. A. E. Stoecker, 832 Flatbush Ave., Brooklyn, N. Y., Tea & Coffee.

5267

Question 1. No.

Question 2. No.

Question 3. New York City.

Question 4. No.

Question 5. Compilation many authors.

Question 6. Long ago.

36. Walter Gamberson, 18 Newark Ave., Jersey City, N. J., Shoes.

5268

Question 1. No.

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Compilations from time to time.

Question 6. Many years ago.

5269

Exhibit: Produced by Witness Schultz.

37. G. W. Bilby, 177 Montgomery Street, Jersey City, N. J., Paint Supplies.

Question 1. No.

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Webster & others.

Question 6. Long ago.

5270

38. Wm. Rendell, Trenton, N. J., Wholesale Shoe Mfg.

Question 1. No.

Question 2. Anybody.

Question 3. Phila. & N. Y.

Question 4. No.

Question 5. Not Webster entirely, added to from time to time.

Question 6. Many years ago.

5271

39. Maxwell Hornell, 94 Thomas St., Newark, N. J., Theatre.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. New York.

Question 6. Long ago.

5272

40. Henry Price, 693 South Broad St., Trenton, N. J., M'f'r Door Mats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

Exhibit: Produced by Witness Schultz.

5273

41. Ellwood Roberts, 54 Commerce St., Trenton, N. J., P. R. R. Freight.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

42. Frank L. Biler, 907 Carteset Ave., Trenton, N. J., Salesman.

5274

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

43. W. Green, 237 No. Broad St., Trenton, N. J., Police Officer.

5275

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

44. Thomas Mahoney, 117 Pearl St., Trenton, N. J., Officer.

5276

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

5277 *Exhibit: Produced by Witness Schultz.*

45. John G. Morgan, 723 South Broad Street,
Trenton, N. J., Shoe Mfg.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

5278 46. A. K. Formas, 24 Broad Street, Trenton,
N. J., Building Inspector.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

5279 47. S. H. Stradley, 833 Market Street, Wil-
mington, Del., Fire Insurance.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Could not say

Question 6. " " "

5280 48. Walter B. McKay, 5 E. 9th Street, Wil-
mington, Del., Stationers.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

Exhibit: Produced by Witness Schultz.

5281

49. J. Krohm, 362 Bourse Building, Phila., Pa.,
Hay & Grain Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

50. W. Mahoney, 286 First Street, Jersey City,
N. J., Florist. 5282

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

51. Sam Lipton, 12 Newark Ave., Jersey City,
N. J., Clothier. 5283

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. No.

52. J. I. Jessup, 909 Market St., Wilmington,
Del., Manager. 5284

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

5285 *Exhibit: Produced by Witness Schultz.*

53. Louis Le Combe, 337 56th St., Brooklyn, N. Y., Shipfitter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Don't know.

5286 54. George Anderson, 150 30th St., Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Don't know.

5287 55. Robert Schulz, 437 3rd Ave., Brooklyn, N. Y., Tool Grinder, Robin's Dry & Repair Co.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Don't know.

5288 56. Chas. Davis, 209 Lexington Ave., Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

Exhibit: Produced by Witness Schultz.

5289

57. William Melody, 386 Van Brunt St., Brooklyn, N. Y., Shipfitter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Don't know.

58. William Walker, 94 Lynch St, Brooklyn, N. Y., Receiving Clerk.

5290

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

59. Edward McMellin, 49 Dikeman St., Brooklyn, N. Y., Clerk.

5291

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

60. Henry Boyle, 206 Conover St., Brooklyn, N. Y., Clerk.

5292

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

5293

Exhibit: Produced by Witness Schultz.

61. Joseph Seitz, 280 Maujer Street, Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

5294

62. Harry Deaner, 155 Gatting Place, Brooklyn, N. Y., Ship Fitter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Don't know.

5295

63. Dr. H. Dangler, 445 Classon Avenue, Brooklyn, N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know, has no idea.

5296

64. Dr. G. Westover, 184 St. Nicholas Avenue, Brooklyn, N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

Exhibit: Produced by Witness Schultz.

5297

65. Harold Johnson, 12 Clinton Street, Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Don't know.

5298

66. A. Hamlen, 150 Montague Street, Brooklyn, N. Y., Insurance.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Long ago.

67. C. F. Curtis, 6 Newark Avenue, Jersey City, N. J., Del. Light Co. 5299

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and many others.

Question 6. Many years ago.

68. J. E. Hudson, 6 Newark Avenue, Jersey City, N. J., Delaware Gas Light Company. 5300

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster and others.

Question 6. Before my time.

5301

Exhibit: Produced by Witness Schultz.

68. S. Crowell, 138 Albany St., New Brunswick,
N. J., N. Y. Tel. Co.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others

Question 6. Before my time.

5302

70. D. G. Odell, 367 Washington St., Brooklyn,
N. Y., Broker.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Some years ago.

5303

71. Walter Moulton, Room 204, Eagle Build-
ing, Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster and others.

Question 6. Many years ago, before my
time.

5304

72. Geo. W. Smith, 249 Jackson St., Trenton,
N. J., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Years ago.

Exhibit: Produced by Witness Schultz.

5305

73. Nicholas Jordan, So. Warren St., Trenton,
N. J., Clothing Mfg.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Long ago.

74. Geo. C. Prace, 216 Pearl St., Trenton, N. J.,
Clerk.

5306

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster not entirely.

Question 6. Long time ago.

75. Harry Wilson, 19 So. Warner, Trenton, N.
J., Wall paper.

5307

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Long ago.

76. A. Yerkes, 7 E. State St., Trenton,
N. J., Wholesale Cigar Co.

5308

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and a number of people.

Question 6. Long ago.

5309 *Exhibit: Produced by Witness Schultz.*

77. L. T. Walkers, 960 So. Broad St, Trenton,
N. J., Builder.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No

Question 5. Webster not entirely.

Question 6. Years ago.

5310 78. Dr. J. E. Keeler, 17 W. State St., Trenton,
N. J., Dentist

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No

Question 5. Webster and many others.

Question 6. Years ago.

5311 79. Henry Glenk, 217 West Hanover Street,
Trenton, N. J., Cafe.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. At different times years ago.

5312 80. O. R. Wetzel, 501 East State Street, Tren-
ton, N. J., Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

5313

81. R. A. Snyder, 477 Hamilton Avenue, Trenton, N. J., Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Years ago.

82. H. K. Mitchell, 794 Stuyvesant Avenue, Trenton, N. J.

5314

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster, but not all.

Question 6. Years ago.

83. Dr. C. H. Ale, 17 West State Street, Trenton, N. J., Dentist.

5315

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Started by Webster and added to.

Question 6. Many years ago.

84. Dr. Mitchell, 110 Centre Street, Trenton, N. J., M.D. Doctor.

5316

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5317

Exhibit: Produced by Witness Schultz.

Question 5. Credit not all due to Webster,
compiled from other work.

Question 6. Years ago.

85. Dr. W. A. Kregloh, 212 State Street, Brooklyn, N. Y., Doctor.

Question 1. No.

Question 2. No.

5318

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. Long ago.

86. O. R. Applegate, 819 Revere Avenue, Trenton, N. J., Photographer.

Question 1. No.

Question 2. No.

Question 3. No.

5519

Question 4. No.

Question 5. Noah Webster and others.

Question 6. Years ago.

87. S. Slonim, 161 Church Street, New Brunswick, N. J., Jewelry.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5320

Question 5. Webster and others.

Question 6. Long ago.

88. L. H. Wolff, 138 Albany Street, New Brunswick, N. J., New York Telephone Company.

Question 1. No.

Question 2. No.

Question 3. No.

*Exhibit: Produced by Witness Schultz.*53²¹

Question 4. No.

Question 5. Webster and others.

Question 6. Recently.

89. August Petrie, 307 Washington St., Brooklyn, N. Y., Brewer Representative.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

53²²

Question 5. Noah Webster and others.

Question 6. Can't say.

90. Frederick Whitehead, Trenton, N. J., Contractor.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

53²³

Question 6. A number of people.

91. Howell Brader, 204 Pacusie St., Trenton, N. J., Printer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. ()

53²⁴

92. Wm. Vogel, 701 E. State St., Trenton, N. J., Butcher.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5325

Exhibit: Produced by Witness Schultz.

Question 5. Webster and others.

Question 6. ()

93. David S. South, 145 E. Hanover St., Trenton, N. J., State House.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5326

Question 5. Webster.

Question 6. By the originator of the Dec.
Compilation by Webster
and many others.

94. J. H. Austin, 105 Colonial Ave., Trenton, N. J., Contractor.

Question 1. No.

Question 2. No.

Question 3. No.

5327

Question 4. No.

Question 5. Webster and any number of
other people from time to
time.

Question 6. ().

95. Fred B. Potter, 895 2nd St., Trenton, N. J.,
Clerk-Real Estate-P. R. R.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5328

Question 5. Webster and improved upon
by others.

Question 6. By a committee of opinions.

Exhibit: Produced by Witness Schultz.

5329

96. H. K. Stevenson, 128 E. Hanover St., Trenton, N. J., Clerk State Dept. of Education.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster and others.

Question 6. No.

97. W. H. Lindner, 44 Park Place, Morristown, N. J., Western Union Tel.

5330

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Committee of Colleges.

Question 6. 40 years ago.

98. J. Thorn, Sr., 819 Berkley, Trenton, N. J., Pressman True Am.

5331

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Party of Men.

Question 6. Years ago.

99. Chas. Heath, Trenton, N. J., Builder Material.

5332

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 4. No.

Question 5. By an authorized Comm.

Question 6. Before my time.

5333 *Exhibit: Produced by Witness Schultz.*

100. Wm. L. Haines, 131 Bayard St., Trenton.
N. J., Steam Engineer.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. A number of authors
- Question 6. Years ago.

5334 101. Dr. S. Freeman, 560 E. State Street, Trenton, N. J., Doctor, M. D.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. By a committee from time to time.
- Question 6 Years ago.

5335 102. Julius Schultz, 119 Temple Street, Trenton, N. J., Clothing Mfg. Manager.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Largely a compilation.
- Question 6. Years ago before my time.

5336 103. W. C. Clyver, 18 McKinley Aevnue, Trenton, N. J., Shoes.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Different Men.
- Question 6. Long ago "original."

Exhibit: Produced by Witness Schultz.

5337

104. L. Echstein, 1116 W. State Street, Trenton, N. J., Broom Mfg.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Different Composers.

Question 6. Years ago.

105. Simin Gersen, 34 Livingston Street, Trenton, N. J., Shirts.

5338

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many people.

Question 6. Years ago.

106. John P. Nielson, 5121-5th Avenue, Brooklyn, N. Y., Hotel.

5339

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many Compilations.

Question 6. 30 years.

107. Eugene Malley, 353 Fulton Street, Brooklyn, N. Y., Dennetts Manager.

5340

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many Compilations.

Question 6. Many years ago.

5341 *Exhibit: Produced by Witness Schultz.*

108. Robt. Simpson, 381 1st Street, Brooklyn, N. Y., Notary.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Compiled from standard works.

5342 Question 6. Middle of last century.

109. Martin O'Neill, 478 60th St., Brooklyn, N. Y., Builder.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No

Question 5. Many compilations.

Question 6. 30 years.

5343 110. M. A. Elliott, 838 Flatbush Ave., Brooklyn, N. Y., Clerk Eagle.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No

Question 5. Many editors.

Question 6. 40 years.

5344 111. Waldorf Welton, 842 Union St., Brooklyn, N. Y., Adv. Agt.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. A collection of college professors.

Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

5345

112. H. Ehler, 271 Washn., St., Brooklyn, N. Y., Bowling Alley.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many people.

Question 6. Years ago.

113. Robt. Stevenson, 4417 7th Ave., Brooklyn, N. Y., Treas.

5346

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Sets of learned people.

Question 6. About 1835, maybe earlier.

114. Thurston Scott Welton, 842 Union St., Brooklyn, N. Y., Doctor.

5347

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No one man; a compilation.

Question 6. Between 1830 to 1845; within that period.

115. Robt. S. Kemp, 284 Windsor Place, Brooklyn, N. Y., Accountant.

5348

Question 1. Don't know.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Compilation and a growth.

5349 • *Exhibit: Produced by Witness Schultz.*

Question 6. Also a growth, using words found in Johnson's and preceding dictionaries.

116. Joe Schwager, 325 Wash. St., Brooklyn, N. Y., Cigars.

5350

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many writers.

Question 6. 40 years.

117. Chas. Sanger, 67 Court St., Brooklyn, N. Y., Real Estate.

5351

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many completed the work.

Question 6. Long ago.

118. Nathan Kaplin, 26 Court St., Brooklyn, N. Y., Real Estate.

5352

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Many authors.

Question 6. Long ago.

119. Robt. B. Wolton, 842 Union St., Brooklyn, N. Y., Doctor.

Question 1. No.

Question 2. No.

Question 3. No.

Exhibit: Produced by Witness Schultz.

5353

Question 4. No.

Question 5. Students of rhetoric

Question 6. About 1860.

120. David Hughes, 18 Hawthorne St., Brooklyn, N. Y., Salesman

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5354

Question 5. Men appointed for such work.

Question 6. About 1855.

121. Sherman Petrie, 427 15th St., Brooklyn, N. Y., Carpenter Tug Boats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5355

Question 5. University professors.

Question 6. Long ago.

122. L. A. Stokes, 103 Church St., New Brunswick, N. J., Gents' Furnishing.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Compilation.

5356

Question 6. Years ago.

123. David Posner, 53 Church St., New Brunswick, N. J., Dry goods.

Question 1. No.

Question 2. No.

Question 3. No.

5357 *Exhibit: Produced by Witness Schultz.*

Question 4. No.

Question 5. Compilation many authors.

Question 6. Long ago.

124. H. Eber, 29 Church St., New Brunswick,
N. J., Occupation Furniture.

Question 1. No.

Question 2. No.

5358

Question 3. No.

Question 4. No.

Question 5. No end of authors.

Question 6. Many years ago.

125. Pat Grimley, 91 Church St., New Brun-
swick, N. J., Occupation Teas, Coffee.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5359

Question 5. Compilation.

Question 6. Long ago.

126. S. Slonim, 161 Church St., New Brunswick,
N. J., Occupation Jewelry.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5360

Question 5. Compilation many authors.

Question 6. Years ago.

127. Anna Casey, Dupont Building, Market
Street, Wilmington, Del., Stenographer, Del. Elec-
tric Supply Co.

Question 1. No.

Question 2. No.

Exhibit: Produced by Witness Schultz.

5361

- Question 3. No.
- Question 4. No.
- Question 5. Compilation.
- Question 6. Recently.

128. F. M. Macdonald, 70 Park Place, Newark,
N. J., Insurance.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Number of people.
- Question 6. No fixed time matters being
arranged as editions are
printed.

5362

129. Walter Prendergast, 368 Clinton Street,
Brooklyn, N. Y., Broker.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Various people.
- Question 6. How do I know I never thought
of it.

5363

130. Harry Lyttle, 377 Clinton Street, Brooklyn,
N. Y., Cashier Robins Dry docks.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I should judge several smart
men.
- Question 6. I don't know.

5364

5365

Exhibit: Produced by Witness Schultz.

131. F. S. Faye, 460 Bainbridge St., Brooklyn,
N. Y., Claim Agent.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Questions 5 and 6. Fixed faculties from
time to time by different
colleges.

5366

132. Aug. Gauch, 12 Hawthorne St., Brooklyn,
N. Y., Mfg.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. From previous dictionaries.

Question 6. Don't know.

5367

133. G. F. Frost, 44 Court St., Brooklyn, N. Y.,
Corn Ex. Bank.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Can't think.

Question 6. Time Noah's Ark.

5368

134. A. Danelson, Williamsburg Hospital,
Brooklyn, N. Y., Supt. of Hospital.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Think long ago.

Exhibit: Produced by Witness Schultz.

5369

135. Dr. Meiseles, 155 Vernon Ave., Brooklyn,
N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Long ago.

136. John Colson, 704 Park Ave., Brooklyn, N.
Y., Clerk.

5370

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Long ago.

137. M. L. Hamilton, 732 Flatbush Avenue,
Brooklyn, N. Y., Real Estate.

5371

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Doubt if one in a thousand
could answer affirmatively
all the questions.

Question 6. Forty years ago.

138. Fred G. Isle, 846 Hancock Street, Brook-
lyn, N. Y., Real Estate.

5372

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5373

Exhibit: Produced by Witness Schultz.

Question 5. Don't know.

Question 6. Long ago.

139. O. A. Boyd, 704 Market Street, Wilmington, Del., Shoes.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5374

Question 5. Don't know.

Question 6. Many years ago.

140. Greta Dutton, 514 Ford Building, Wilmington, Del., Stenographer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5375

Question 5. Don't know.

Question 6. Long ago.

141. C. F. Morfort, Wilmington, Del., Building Superintendent, Y. M. C. A.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

5376

Question 6. Long ago.

142. W. E. Van Liew, 25 Speedwell Avenue, Morristown, N. J., Funeral Director.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

5377

Question 5. Can't say.

Question 6. Years ago.

143. E. Schmidt, 359 Springfield Ave., Newark,
N. J., Butcher.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

5378

Question 6. Long ago.

144. C. Schultz, 350 Washington St., Newark,
N. J., Printer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

5379

Question 6. Long time ago.

145. D. J. O'Connor, 710 Chestnut St., Phila.,
Pa., Owner A. J. Coulter Hats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Some time ago.

5380

146. H. Reyno, 21 S. 6th St., Phila., Pa., Drug-
gist.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. Before my time.

5381 *Exhibit: Produced by Witness Schultz.*

147. I. Lipsky, 522 Market Street, Philadelphia, Pa., Clothing.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Long ago. 9

5382 148. Wm. F. Voigt, 25 Sixth Street, Philadelphia, Pa., Paper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. Long ago.

5383 149. C. W. Sedam, Jr., 53 Paterson Street, New Brunswick, N. J., Agent.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Long ago.

5384 150. Saml. Brown, 905 Market Street, Wilmington, Del., Penn. R. R. Office Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No.

Question 6. Recently.

Exhibit: Produced by Witness Schultz.

5385

151. N. V. Duling, 627 Market St., Wilmington,
Del., Salesman-Shoes.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Recently.

152. S. Schneider, 102 Orange St., Newark, N. J.,
Cigars.

5386

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Don't know.

153. J. J. Schmidt, 88 Canal St., Newark, N. J.,
Coal.

5387

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Don't know.

154. W. C. Coryman, 229 Sixth Ave., Newark,
N. J., Salesman.

5388

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. I do not know.

5389

Exhibit: Produced by Witness Schultz.

155. J. G. Seiser, 535 Central Ave., Newark,
N. J., Baker.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Don't know.

5390

156. E. M. McLean, 128 Wright St., Newark,
N. J., Plumber.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Dan'l Webster.
- Question 6. Don't know.

5391

157. Chas. S. Samuels, 335 Bourse Building,
Philadelphia, Pa., Insurance Broker.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.

158. Geo. Pilgy, 89 Clay St., Painter.

5392

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Don't know.

Exhibit: Produced by Witness Schultz.

539

159. Geo. J. Jagle, 829 Broad St., Newark, N. J.,
Merchant.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Can't imagine.

160. Joseph S. Shoyer, 251 Market St., Newark,
N. J., Printer.

539

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. No.

161. H. R. Mill, 836 Broad St., Newark, N. J.,
Barber.

539

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Dan'l Webster.

Question 6. Cannot say.

162. M. M. Bendheim, S. W. Cor. 74 Market St.,
Wilmington, Del., Walk-Over Boot Shop.

539

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. All less.

5397

Exhibit: Produced by Witness Schultz.

163. John Bonnett, 250 E. Third St., Brooklyn,
N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I should judge Webster.

Question 6. Don't know.

5398

164. James Bruce, Brooklyn, N. Y., Purchasing
Agent Robins Dry Dock.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I would credit Webster.

Question 6. I haven't any idea.

165. Geo. Try, Robins Dry Docks, Brooklyn, N.
5399 Y., Boss Blacksmith.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I give it up.

166. Ben Yerkes, 235 Spring St., Trenton, N. J.,
Cigars.

5400

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Don't know.

Exhibit: Produced by Witness Schultz.

5401

167. A. G. Howell, 157 Hoffman St., Trenton,
N. J., Clerk City Hall.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Time to time.

168. F. K. Smith, 836 Flatbush Ave., Brook- 5402
lyn, N. Y., Shoes.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

169. T. J. Murphy, 510 E. 16th St., Brooklyn, 5403
N. Y., Real Estate.

Question 1. No.

Question 2. Webster.

Question 3. No.

Question 4. No.

Question 5. Dan'l Webster.

Question 6. Long ago.

170. Raymond D. Hill, 201 Broad St., Bank
Bldg., Trenton, N. J., Manager.

5404

Question 1. No.

Question 2. Webster & publishers.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Years ago before my time.

5405

Exhibit: Produced by Witness Schultz.

171. Edward Jurgensen, 45 Broadway, Mining.

Question 1. No.

Question 2. Not necessarily.

Question 3. No.

Question 4. Not posted.

Question 5. Natural inference Noah Webster.

Question 6. Not recently.

5406

172. Chas. Worcester, 207 Washington Street, Brooklyn, N. Y., Excise Bonds.

Question 1. No.

Question 2. Am. Book Co.

Question 3. Boston, Mass.

Question 4. No.

Question 5. Noah Webster compiled the work.

Question 6. Long ago.

5407

173. Ed. J. Fandrey, 307 Washington Street, Brooklyn, N. Y., Lawyer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. Subsequent editions gotten up by other publishers.

Question 5. Noah Webster.

Question 6. Long ago.

5408

174. A. J. Mueller, 42 Clinton Street, Newark, N. J., Law Books.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Several Authors.

Question 6. Some years ago.

Exhibit: Produced by Witness Schultz.

5409

175. W. E. McCann, 599 Flatbush Avenue,
Brooklyn, N. Y., Real
Estate.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. No idea who wrote the new
edition.

5410

Question 6. Long ago.

176. Wm. Hammond, 38 McKinley Avenue,
Trenton, N. J., Bookkeeper, Hooper & Co.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. Under the impression each ten
years.

Question 5. Webster.

5411

Question 6. Years ago.

177. J. Dana Weld, 16 Warren Street, Trenton,
N. J., Bookkeeper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Years ago.

5412

178. H. L. Runyar, 47 W. Hanover Street,
Trenton, N. J., Draftsman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

413

Exhibit: Produced by Witness Schultz.

Question 5. Webster.

Question 6. Don't know before my time.

179. Jno. Knopf, 39 N. Willow Street, Trenton, N. J., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

5414

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

180. Irving Rosenmans, 420 W. Hanover Street, Trenton, N. J., Advertising.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5415

Question 5. Webster.

Question 6. Some time ago.

181. D. T. Magowan, Post Box 660, Trenton, N. J., Transfer Agt.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

5416

Question 6. Long ago.

182. Geo. H. Dopper, 504 Bridge Street, Trenton, N. J., Laundry.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

5417

Question 5. Webster.

Question 6. Years ago.

183. C. R. Richards, 530 Centre Street, Trenton, N. J., Manager Brush Factory.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Years ago.

5418

184. Lincoln Updike, 407 Broad Street, Trenton, N. J., Builder.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Years ago.

5419

185. B. M. Brindley, Stackwood, Trenton, N. J., Wall Paper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Years ago.

5420

186. Geo. W. Sines, 234 E. Front Street, Trenton, N. J., Painter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5421

Exhibit: Produced by Witness Schultz.

Question 5. Webster.

Question 6. Long ago.

187. E. A. Rice, 23 W. Hanover Street, Trenton, N. J., Court House Keeper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5422

Question 5. Noah Webster.

Question 6. Years ago.

188. J. F. Karney, 832A Flatbush Ave., Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

5423

Question 6. Many years ago.

189. J. F. Faulkner, 145 Lefferts Avenue, Brooklyn, N. Y., Broker.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Forty years ago.

5424

190. R. G. Green, 51 Midwood Street, Bklyn., N. Y., Engineer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

5425

Question 5. Daniel Webster.

Question 6. Years ago.

191. Charles Baker, 97 Seventh Avenue, Brooklyn, N. Y., Druggist.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

5426

Question 6. Long ago.

192. Fred Anthony, Williamsburg Hospital, Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

5427

Question 6. Year 1840.

193. Max Greenburg, 652 Flatbush Avenue, Brooklyn, N. Y., Cigars.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

5428

194. Dr. B. Katz, South Third and Bedford Avenue, Brooklyn, N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5429

Exhibit: Produced by Witness Schultz.

Question 5. Daniel Webster.

Question 6. Long ago.

195. George Wunschel, 46 Lexington Avenue,
Brooklyn, N. Y., Watch Dials.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5430

Question 5. Webster.

Question 6. Fifty years.

196. Walter Clarke, 93 Third Place, Brooklyn,
N. Y., Auditor, Robins Dry Docks.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5431

Question 5. Noah Webster.

Question 6. About 1832.

197. Charles E. Tice, 589 Rodgers Avenue,
Brooklyn, N. Y., real estate.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Daniel Webster.

5432

Question 6. During this generation, say
fifty years.

198. A. Heuer, 271 Washington Street, Brook-
lyn, N. Y., Hotel.

Question 1. No.

Question 2. No.

Question 3. No.

Exhibit: Produced by Witness Schultz.

5433

Question 4. No.

Question 5. Daniel Webster.

Question 6. Long ago.

199. Valentine Schlaefel, Eagle Building,
Brooklyn, N. Y., Real Estate.

Question 1. No.

Question 2. No.

Question 3. No.

5434

Question 4. No.

Question 5. Noah Webster.

Question 6. Sixty years ago. I am 84
years old. Known the book
for many years.

200. Dr. F. Cohen, 72 Columbia Street, Brook-
lyn, N. Y., M. D.

Question 1. No.

Question 2. No.

5435

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. 1700.

201. Dr. M. Feiner, 536 Dean Street, Brooklyn,
N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

5436

Question 4. No.

Question 5. Noah Webster.

Question 6. 1850.

Exhibit: Produced by Witness Schultz.

5437

202. Dr. F. Harnder, 208 Eighth Avenue,
Brooklyn, N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

5438

203. E. Flandrey, 307 Washington Street,
Brooklyn, N. Y., Lawyer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

5439

204. Rufus A. Reif, 339 46th Street, Brooklyn,
N. Y., Hotel.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Daniel Webster.

Question 6. Many years ago.

5440

205. Dr. Scofield, 72 Lee Avenue, Brooklyn,
N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. About 1848.

*Exhibit: Produced by Witness Schultz.*544¹

206. Dr. H. A. Wade, corner Green and Nos-
trand Avenues, Brooklyn, N. Y., M. D.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. 1850.

207. Dr. Waldie, 470 Ft. Hamilton Avenue,
Brooklyn, N. Y., M. D.

544²

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

208. Dr. Slavin, 174 N. 6th Street, Brooklyn,
N. Y., M. D.

544³

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

209. Henry Peters, 325 Wash. Street, Brooklyn,
N. Y., Cigars.

544⁴

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster & etc.

Question 6. Many years ago.

5445

Exhibit: Produced by Witness Schultz.

210. Dr. A. A. Mendez, 29 E. 44th Street, City,
M. D.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster wrote the nu-
cleus.

5446

Question 6. Year 1800.

211. Bernhard Schulz, John N. Robins Dry
Docks, Brooklyn, N. Y., Foreman.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. Before my time, 35 years old.

5447

212. Chas F. Schlaefel, Eagle Building, 307
Washington Street, Brooklyn, N. Y., Real Estate.

- Question 1. No
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. Long ago.

5448

213. Walter Vagts, 85 Walker Street, New York
City, Hardware.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Danl. Webster, Noah.
- Question 6. Many years ago.

Exhibit: Produced by Witness Schultz.

5449

214. Patrick Forte, 832 Flatbush Avenue,
Brooklyn, N. Y., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Many years ago.

215. Robt. Bernet, 271 Wash. St., Brooklyn, N. Y., Alley Builder. 5450

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long time ago.

216. Dr. Stahl, 372 Bainbridge Street, Brooklyn, N. Y., M. D. 5451

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. 1878.

217. N. Gottlieb, 93 7th Avenue, Brooklyn, N. Y., Stationery salesman.

5452

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. D. Webster.

Question 6. Long, long ago.

5453

Exhibit: Produced by Witness Schultz.

218. B. H. Barto, 22 Court Street, Brooklyn,
N. Y., Erie R. R.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster, Dan'l.
- Question 6. Long ago.

5454

219. Joe Mahoney, Williamsburg Hospital,
Brooklyn, N. Y., Tel. operator.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Long ago.

5455

220. Henry Affel, 97 7th Ave., Brooklyn, N. Y.,
Druggist.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. 1825.

5456

221. J. W. Roberts, 831 Market St., Wilming-
ton, Del., Gent's Furnisher.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Before my time.

Exhibit: Produced by Witness Schultz.

5457

222. E. H. Simons, 102 W. 15th Street, Wilmington, Del., Contractor.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Supposition Webster.

Question 6. Beyond my time.

223. H. P. Goslin, 915 Shipley Street, Wilmington, Del., Auto File Company.

5458

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Can't tell, before my time.

224. F. R. Philips, 2314 Lamotte Street, Wilmington, Del., Window Trimmer.

5459

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Some time ago.

225. J. H. Brewer, Tenth and Orange Streets, Wilmington, Del., Clerk, Y. M. C. A.

5460

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5461 *Exhibit: Produced by Witness Schultz.*

226. W. L. Henderson, 832 Market Street, Wilmington, Del., Hats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5462 227. J. R. Michaelis, James Mullin & Sons, Sixth and Market Streets, Wilmington, Del., Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Many years ago.

5463 228. Walter G. Valentine, James Mullen & Son, Sixth and Market Streets, Wilmington, Del., Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Before my time.

5464 229. C. E. Pierson, 913 Market Street, Wilmington, Del., Insurance.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

5465

Question 5. Webster.

Question 6. Some time ago.

230. J. Phelps, 112 West Tenth Street, Wilmington, Del., Grocers.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

5466

Question 6. Long ago.

231. E. N. Keeler, 18 South Ourbrook Avenue, Trenton, N. J., Druggist.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Many years ago.

5467

232. E. C. Hall, United States Hotel, Morristown, N. J., Hotel Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5468

233. E. C. Hall, U. S. Hotel, Morristown, N. J., Hotel Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5469

Exhibit: Produced by Witness Schultz.

Question 5. Webster.

Question 6. Long ago.

234. G. E. Babbitt, 8 Merchants Block, Morristown, N. J., Clothiers.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5470

Question 5. Webster.

Question 6. Years ago, 40 or more.

235. H. A. Babbett, 8 Merchants Block, Morristown, N. J., Clothiers.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5471

Question 5. Webster.

Question 6. Long ago.

236. P. F. Lipter, 839 Broad Street, Newark, N. J., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

5472

Question 6. Many years ago.

237. F. Aldendorff, 839 Broad Street, Newark, N. J., Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

54

Question 5. Webster.

Question 6. Long ago.

238. S. E. Raube, 839 Broad Street, Newark,
N. J., Manager.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

54

Question 6. Before my time.

239. J. Bernstein, 823 Broad Street, Newark,
N. J., Hats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5473

240. J. Eisenstodt, 823 Broad Street, Newark,
N. J., Hats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Dan'l Webster.

Question 6. Long ago.

547

241. Eugene Stehlin, 34 13th Avenue, Newark,
N. J., Cashier.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5477

Exhibit: Produced by Witness Schultz.

Question 5. Webster.

Question 6. Long ago.

242. C. Wilson Pollard, 260 Oliver Street,
Newark, N. J., Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5478

Question 5. Noah Webster.

Question 6. Long ago.

243. A. J. Miller, 12 & 14 William Streets, New-
ark, N. J., Electric supply.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

5479

Question 6. Before my time.

244. Rich'd Crosby, 12 and 14 William Street,
Newark, N. J., Electric supply.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5480

245. E. H. Scaltergood, 12 & 14 William Street,
Newark, N. J., Electric supply.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

5481

Question 5. Webster.

Question 6. Long ago.

246. Chas. Nearman, 836 Broad Street, Newark,
N. J., Barber.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

5482

Question 6. Some time ago.

247. N. T. Atchley, 156 Market Street, Newark,
N. J., Manager.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Years ago.

5483

248. Elias Schill, 7 Commerce Street, Newark,
N. J., Saloon keeper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Daniel Webster.

Question 6. Long ago.

249. F. S. Fettingier, 893 So. 17th Street, New-
ark, N. J., Advertiser.

5484

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5485

Exhibit: Produced by Witness Schultz.

Question 5. Noah Webster.

Question 6. Before my time.

250. E. J. Norris, 40 Commerce Street, Newark, N. J., Merchant.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5486

Question 5. Noah Webster.

Question 6. 1812.

251. Daniel Maher, 104 Johnson Avenue, Newark, N. J., Plumber.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 6. Noah Webster.

5487

Question 6. Before my time.

252. F. Martus, 732 Broad Street, 832 Broad Street, Newark, N. J., Painter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Dan'l Webster.

Question 6. Long ago.

5488

253. M. T. McKeown, 323 Bourse Building, Philadelphia, Pa., Stenographer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

548

Question 5. Noah Webster.

Question 6. Many years ago.

254. W. H. Zeliff, 481 Bourse Building, Phila., Pa., Mutual Transit Co.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

519

Question 6. Long while ago.

255. P. Sander, 434 Market Street, Philadelphia, Pa., Stationery.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Some time ago.

549

256. John Deese, 508 Market Street, Philadelphia, Pa., Howe Scale.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

549

257. A. D. Austen, 508 Market Street, Philadelphia, Pa., Howe Scale.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5493

Exhibit: Produced by Witness Schultz.

Question 5. Noah Webster.

Question 6. Long ago.

258. W. E. Darnell, 21 So. 6th Street, Philadelphia, Pa., Dry Goods.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5494

Question 5. Webster.

Question 6. Long ago.

259. Austin McClure, 138 Albany Street, New Brunswick, N. J., N. Y. Tel. Co.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

5495

Question 6. Many years ago.

260. D. H. McCarr, 138 Albany Street, New Brunswick, N. J., N. Y. Tel. Co.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

5496

261. C. H. Cramer, 349 George Street, New Brunswick, Real Estate.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Exhibit: Produced by Witness Schultz.

5497

Question 5. Webster.

Question 6. Long ago.

262. John E. Elmendorf, National Bank Building, New Brunswick, N. J., Lawyer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster, Noah.

5498

Question 6. Many years ago. Compilation from time to time.

263. Joseph A. Hartman, 55 Schureman St., New Brunswick, N. J., Piano.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

5499

Question 6. Can't say.

264. James Kellett, 196 Nelson Street, New Brunswick, N. J., Retired Hotel Bar.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Daniel Webster.

Question 6. 50 years ago.

5500

265. Wesley Kempton, 22 Church Street, New Brunswick, N. J., Shoes.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5501

Exhibit: Produced by Witness Schultz.

Question 5. Danl. Webster.

Question 6. Long ago.

266. Jas. Gurley, 31 Church St., New Brunswick, N. J., Teas & Coffee.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5502

Question 5. Danl. Webster.

Question 6. 40 years.

267. K. Fox, 50 Church Street, New Brunswick, N. J., Millinery.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

5503

Question 6. Before my time.

268. J. J. Colins, 56 Church St., New Brunswick, N. J., Piano.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Danl. Webster.

Question 6. Long ago.

5504.

269. G. Dreyer, 75 Church St., New Brunswick, N. J., Masie & Sporting Goods.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Compilation long ago.

Exhibit: Produced by Witness Schultz.

550

270. M. G. Keefe, 69 Albany St., New Brunswick, N. J., Pianos.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Long ago.

271. W. P. Onderkirk, 52 Church St., New Brunswick, N. J., Hats. 550

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Years ago.

272. Same Posner, 52 Church St., New Brunswick, N. J., Dry Goods. 550

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. 30 years ago.

273. Geo. King, 31 Church Street, New Brunswick, N. J., Shoes.

5508

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. Long ago.

5509

Exhibit: Produced by Witness Schultz.

274. M. Reitz, 21 Church Street, New Brunswick, N. J., Jewelry.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5510

275. J. Levinsen, 101 Church Street, New Brunswick, N. J., Jewelry.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Danl. Webster.

Question 6. Years ago.

5511

276. Chas D. Hungrige, 19 Church Street, New Brunswick, N. J., Hats.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Danl. Webster.

Question 6. Many years ago.

277. Nelson M. Hammell, 7 Church Street, New Brunswick, N. J., Toys & etc.

5512

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

55¹³

278. Sam Myers, 81 Newark Avenue, Jersey City, N. J., Cigars.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know, think Webster.

Question 6. Long ago.

279. Geo. Vill, 67 Newark Avenue, Jersey City, N. J., Trunks. 55¹⁴

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. 30 years.

280. G. H. H. Pratt, 6 Newark Avenue, Jersey City, N. J., Del. Gas Light Co. 55¹⁵

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Danl. Webster.

Question 6. 1832.

281. G. Lewis, Crescent Shoes, 84 Newark Avenue, Jersey City, N. J., Shoes.

Question 1. No. 55¹⁶

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5517 *Exhibit: Produced by Witness Schultz.*

282. Nicholas Micucci, 487 Palisade Avenue,
Jersey City, N. J., Real Estate.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Many years ago.

5518 283. Albert Hegson, 279 Grove St., Jersey City,
N. J., Real Estate.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Long ago.

5519 284. R. A. Schmander, 49 Avon Ave., Newark,
N. J., Driver.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Danl. Webster.
- Question 6. Long ago.

285. A. Shiels, 168 Lafayette St., Newark, N.
J., Photographer.

- 5520
- Question 1. No.
 - Question 2. No.
 - Question 3. No.
 - Question 4. No.
 - Question 5. Webster.
 - Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

5521

286. M. J. Sheridan, 224 Chestnut St., Newark,
N. J., Contractor.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

287. Albert Seety, 14 Blum St., Newark, N. J., 5522
Hat Mfg.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Danl. Webster.

Question 6. Long ago.

288. E. G. Selby, 786 Broad, Newark, N. J., 5523
Real Estate.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long ago.

289. Adolf Schwarz, 604 Springfield, Newark,
N. J., Saloon.

Question 1. No.

5524

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5525 *Exhibit: Produced by Witness Schultz.*

290 J L. Read, 356 Mulberry St., Newark, N. J., Contractor.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Long ago.

5526 291. G. F. Webber, 836 Broad St., Newark, N. J., Barber.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Before my time.

5527 292. M. O'Connor, Clark St., Newark, N. J., Spinner.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. A long time ago.

5528 293. Wm. Nabb, 825 Broad Street, Newark, N. J., Salesman.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Dan'l Webster.
- Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

552

294. O. S. Atkinson, 825 Broad Street, Newark, N. J., Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

295. J. McElroy, 845 Broad Street, Newark N. J., Salesman.

553

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Before I was born.

296. J. Grace, No. 4th Street, Newark, N. J., Machinist.

553

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

297. Frank Washington, 18 Oriental Street, Newark, N. J., Salesman.

553

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5533 *Exhibit: Produced by Witness Schultz.*

298. Geo. N. Willis, 73 Hillside Avenue, Newark, N. J., Salesman.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. Long ago.

5534 299. Emil Dorsch, 831 South 13th Street, Newark, N. J., Salesman.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Dan'l Webster.
- Question 6. Long while ago.

5535 300. Charles B. Pollard, 20 Milford, Avenue, Newark N. J., Retired.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. Half a century ago more or less.

5536 301. W. F. Anderson, 841 Broad Street, Newark, N. J., Salesman.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Long while ago.

Exhibit: Produced by Witness Schultz.

5537

302. Wm. Roberts, 341 Broad Street, Newark,
N. J., Shoe Store.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Many years ago.

303. Robt. H. Hibberd, 825 Broad Street, 5538
Newark, N. J., Manager.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Danl. Webster.

Question 6. Before my time.

304. E. E. Mount, 96 Greene Street, Newark, 5539
N. J., Leather Belting, 274 Market Street.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Supposed to be Webster.

Question 6. Long time ago.

305. Edw. Keegan, 526 Market Street, Phila-
delphia, Pa., Steamship supplies.

5540

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Before my time.

5541

Exhibit: Produced by Witness Schultz.

306. C. Robt. Bean, 423 Bourse Building, Philadelphia, Pa., Clerk, Fee Brokers.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

5542

307. Geo. H. White, 221 Market Street, Philadelphia, Pa., China & Glass.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Long time ago.

5543

308. A. Bispham, 522 Market Street, Philadelphia, Pa., Clothing.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long time ago.

5544

309. H. K. Gearhart, 1101 Market Street, Philadelphia, Pa., Hats; Manager.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

Exhibit: Produced by Witness Schultz.

5545

310. R. S. Carson, 516 Market Street, Philadelphia, Pa. Pipes.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster presumably.

Question 6. Long time ago, say 40 years.

311. Wm. S. Skahan, 516 Market Street, Philadelphia, Pa., Pipes. 5546

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Some time ago.

312. J. G. Hamilton, 25 6th Street, Philadelphia, Pa., Paper. 5547

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Long ago.

313. Simon Miller, 522 Market St., Philadelphia, Pa., Shoes. 5548

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster, don't know first name.

Question 6. Long time ago.

5549

Exhibit: Produced by Witness Schultz.

314. W. W. Wilson, 412 Bourse Building, Philadelphia, Pa., Canned Goods.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. Long time ago.

5550

315. W. Rosenthall, 130 Market St., Philadelphia, Pa., Sporting Goods.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Many years ago; before my time.

5551

316. L. Bower, 522 Market St., Philadelphia, Pa., Clothier.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Some time ago.

5552

MR. HALE: The entire deposition of this witness is objected to as incompetent, irrelevant and immaterial, being wholly *res inter alios acta*, and not binding upon the plaintiff and as calling for pure hearsay statements of persons not under oath, and who are not produced as witnesses or subjected to cross examination, and as relating

Herman Schultz—Cross.

5553

to a time subsequent to the filing of the suit, and motion is made to strike out the entire deposition on all of the above grounds.

CROSS EXAMINATION by Mr. Hale:

x Q. 65. What is your present business? A. Salesman.

x Q. 66. Salesman for whom? A. For the Bell Publishing Company.

5554

x Q. 66. What does that concern publish? A. Publish greeting cards; New Year's and Christmas greeting cards.

x Q. 67. How long have you been in that employment? A. Been there about two months.

x Q. 68. What was your employment before that time? A. Before that time, real estate business.

x Q. 69. And how long in that business? A. About a year.

x Q. 70. Have you ever been in the employ of the Syndicate Publishing Company? A. No, sir.

5555

x Q. 71. Or the Cupples & Leon Company? A. No, sir.

x Q. 72. Except in this investigation which you have spoken of? A. Mr. Adair is the only gentleman I have met.

x Q. 73. Who is Mr. Adair? A. I don't know. I think he is the manager of the Syndicate Publishing Company.

5556

x Q. 74. Did he employ you on behalf of the Syndicate Publishing Company to make this investigation? A. Yes.

x Q. 75. Was the concern of Cupples & Leon Company, mentioned in that connection? A. No, sir.

x Q. 76. Did you have any general talk with any

Herman Schultz—Cross.

5557

of the persons interviewed at the time you asked them these questions? A. No, sir.

x Q. 77. You said nothing whatever to them except to read to them the questions? A. Introduced myself and told them who I was, gave them my name and read the questions to them and asked them if they would not kindly answer them.

5558

x Q. 78. Did none of them exhibit any curiosity as to — A. number of them, yes sir. A number of them did not know—they would not answer the questions, stating they did not want to display their ignorance.

x Q. 79. About how many people did you interview in addition to the 316, whose answers you have spread upon the record? A. I should right off hand—I could not tell—I should say at least as many again or more. I could not say right off hand.

5559

x Q. 80. Did you ask any of those persons how long they had known of Webster's dictionary? A. No, sir; just put these six questions to them.

x Q. 81. Did that question come up in that connection in any of these interviews? A. No, sir.

x Q. 82. Did any of these persons state they had known of Webster's dictionary for a long time, or words to that effect? A. No, sir.

5560

x Q. 83. None of them referred to previous acquaintance with Webster's dictionary? A. No, sir.

x Q. 84. Did you find any one who had never heard of Webster's dictionary? A. No, sir; they did not—except "I don't know;" "don't know anything at all about it."

x Q. 85. Did you ask any of them whether they had a favorable or an unfavorable opinion of Webster's dictionary. A. No, sir.

x Q. 86. Did any of them express an opinion favorable or unfavorable to Webster's dictionary? A. No—only as the statements were prepared. There are some statements on the cards—I cannot recall them or remember them.

x Q. 87. I presume some of these persons said something to you which was not in answer to those specific questions and which you did not take down; is that correct? A. Oh, no; I took the questions.

5562

x Q. 88. Yes; but some of those persons said something to you not in reply to those specific questions, didn't they? A. Yes, sir.

x Q. 89. And I ask you again whether any of them expressed in any way a favorable or an unfavorable opinion of Webster's dictionary? A. They did not.

x Q. 90. Did any of them ever refer to having at any time used Webster's dictionary? A. Why, yes; they used Webster's dictionary, but a good many of them had them in their desk and wanted to go to their desk to be able to answer, and I told them that would not do—for reference.

5563

x Q. 91. How many such occasions were there? A. I should say probably a dozen or less. I couldn't state exactly just how many. When I would go to them and start in and question them they would say, just wait a minute, and they wanted to go to their desk and get a dictionary, and I told them that would not do, that would not answer. I asked them who was the author and they said they did not know.

5564

x Q. 92. When did you make this investigation, the date of it? A. It was on the last day—the 31st day of May.

5565

Herman Schultz—Cross.

x Q. 93. 1912? A. 1912, yes; for eight days.

x Q. 94. You spent all your time in eight days in traveling to these cities and canvassing these persons? A. Yes.

x Q. 95. Did any of these persons refer to having used Webster's dictionary in their school days? A. No, sir.

5566

x Q. 96. Did you take down their answers verbatim or did you abbreviate them? A. Verbatim as they were given.

x Q. 97. You have referred to having handled certain Webster's dictionaries as premiums. With what publications did you handle them as premiums? A. The American Agriculturist, Orange Judd Palmer, Chicago, and the New England Homestead of Springfield. They are all editions of the American Agriculturist, known as the Eastern and Western editions.

5567

x Q. 98. What was the name of the Webster's dictionary which you handled as a premium in connection with this publication? A. Webster's dictionary.

x Q. 99. What sort of books were they? A. The first ones were 12mo, and the other ones were 16mo or pocket edition dictionary.

5568

x Q. 100. Who was the publisher of these books? A. I could not tell you. It has our imprint. We got the imprint on them for that purpose.

x Q. 101. And during what period of time was that? A. That must be fifteen years ago, I guess.

x Q. 102. That would make it some time in the nineties? A. Some time in the nineties, yes. I could tell that if I was home; but it was about fifteen years ago.

x Q. 103. What book did you handle for the World Publishing Company? A. That was the Webster's dictionary also.

x Q. 104. What kind of a book was that? A. That would be what we call a 12mo book.

x Q. 105. It was not an unabridged dictionary? A. No, sir.

x Q. 106. Who published that book? A. The World Publishing Company.

5570

x Q. 107. Where is the World Publishing Company now? A. I think they are out of business so far as I know. They were opposite the old American News Company on Nassau Street.

x Q. 108. What has become of that book? A. I don't know.

x Q. 109. Is it in the market to-day? A. I think I have a copy at home.

x Q. 110. Is it in the market to-day? A. I could not tell you. The book may be in the market. Of course, the title may be changed, as they do, you know. The plates may have been sold and some other publisher taken it up—something of that kind—I could not say.

5571

x Q. 111. Is that at all usual in the trade? A. It is the usual thing, yes. The same way with medical dictionaries and all kinds of books. They are changed from time to time and sold.

x Q. 112. Will you please fix the date which you sold that book as a premium for the World Publishing Company? A. I could not fix the date.

5572

x Q. 112. Are you certain it was prior to the year 1889? A. Yes.

x Q. 113. What enables you to be certain of that fact? A. Because at the time we offered that

5573

Herman Schultz—Re-Direct.

book as a premium we were at 245 Broadway, and we moved to 751 Broadway, and we didn't use it up there—either on Lafayette Place or Fourth Avenue—we only used it at 245 Broadway. I could not give you the exact date.

x Q. 114. For how long a time did you distribute that book? A. Probably off and on for two or three years. I could tell you exactly. I have a book home, I think—I am sure I have.

5574

x Q. 115. Have you a copy of that book in your possession? A. I think I have. I won't be sure of it.

x Q. 116. Will you send it here so that the same may be offered in evidence? A. Yes.

MR. HALE: The previous objection to the testimony of this witness is renewed, and motion is made to strike out the entire deposition upon the grounds stated.

5575

RE-DIRECT EXAMINATION by Mr. Carroll:

Re-D. Q. 117. What reasons did these persons give for not answering who did not answer the questions?

MR. HALE: I object to that as incompetent, irrelevant and immaterial.

5576

A. Those of the better sort—I should judge they were better off in worldly affairs—they did not want to display their ignorance. To one in particular I said, "May I ask you how many real estate offices in Philadelphia?" "I don't know; I have some respect, I don't want to reply." They said they didn't want to display their ignorance. A good many wanted to know what purpose I wanted this information for, "What is it for, and what is it all about."

August E. Eckle—Direct.

5577

ReD. Q. 118. And when you would not tell them they refused to answer? A. They refused to answer.

DEPOSITION CLOSED.

Signature of witness waived by consent.

Adjourned to June 12th, 1912, at 11:00 o'clock
A. M.

5578

NEW YORK, June 12th, 1912.
11 o'clock A. M.

Met pursuant to adjournment.

Present: Counsel as before.

AUGUST E. ECKLE, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

5579

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. What is your age? A. Forty-eight.

Q. 2. Where do you reside? A. 518 West 84th Street.

Q. 3. What is your occupation? A. Books and stationery.

Q. 4. How many years have you been in the book business? A. Thirty-five—about thirty-five years.

5580

Q. 5. What has been your general experience in the book business? A. Salesman, buyer, manager and proprietor.

Q. 6. Have you, during practically all of those

August E. Eckle—Direct.

5581

thirty-five years from time to time sold dictionaries yourself over the counter? A. Yes.

Q. 7. During practically all of those thirty-five years, therefore, you have come in personal contact with retail customers? A. Yes.

Q. 8. What concerns have you been connected with? A. With Brentanos in New York, Washington and Chicago, with Siegel-Cooper's, New York, and Abraham & Strauss, Brooklyn.

5582

Q. 9. Have you now your own store? A. I have.

Q. 10. Where is that? A. 1 West 125th street.

Q. 11. Have the stores where you have been employed all carried dictionaries of various kinds? A. Yes.

Q. 12. And among other dictionaries they have carried Webster's dictionaries? A. Yes.

Q. 13. Do you, in your own store, carry dictionaries of various kinds? A. Yes.

5583

Q. 14. And have you, among other dictionaries, carried Webster's dictionaries? A. Yes.

Q. 15. Among the Webster's dictionaries which you have known, what are the names of some of the publishers? A. Of the various dictionaries that are known?

Q. 16. The various Webster's dictionaries? A. Laird & Lee, the Saalfield Publishing Company. Merriam, Cupples & Leon, and Winston, I believe—there are a number of others—like Hill—that is now published by MacKay.

5584

Q. 17. From your experience during the past thirty-five years as a retail seller of dictionaries, will you state what the ordinary retail customer asks for when he comes in to buy a dictionary? A. Dictionary.

Q. 18. About what proportion of the custo-

August E. Eckle—Direct.

5585

mers desiring a dictionary come in and ask for simply a dictionary? A. Three-quarters.

Q. 19. What do the other quarter ask for? A. Standard dictionary, International dictionary. Generally, various dictionaries that have been recommended to them—Worcester's dictionary.

Q. 20. Of this one-fourth who ask for a Webster's dictionary, for example, what further requirements do they make? A. Repeat that again, please.

5586

Q. 21. I will withdraw the question. Is it a fact that a large proportion of this other fourth which you have spoken of ask for a dictionary simply by some general term, like Webster's dictionary, Standard dictionary, and Century dictionary? A. Yes.

Q. 22. What proportion of the total number of customers who come in to buy a dictionary ask for a dictionary by any more particular title than Standard dictionary or Webster's dictionary? A. What particular proportion?

5587

Q. 23. Yes. Well, there would be that remaining quarter. Three-quarters of the people would mention the fact when they come in and ask for a dictionary, and the remaining quarter ask for some specified dictionary.

Q. 24. You misunderstand the question. You have already testified that three-fourths of the customers ask simply for a dictionary; that about one-fourth have some more particular requirement than simply a dictionary, and ask for dictionaries by some general term, like Webster's dictionary, or Standard dictionary? A. Yes.

5588

Q. 25. What I want to find out from you now is: What part of that remaining quarter ask for a dictionary by some particular title, like G. & C.

5589

August E. Eckle—Direct.

Merriam Company's New International or Funk & Wagnalls Standard or Lippincott's Worcester's? A. I should say—I could not answer that.

Q. 26. Do most of that remaining quarter come within this special or particular class? A. Yes. I don't know what proportion of that thing is. If they come in and ask for a Century dictionary, that is what they want.

5590

Q. 27. If they come in and ask for a Webster's dictionary, what do they want? A. They want a Webster's dictionary.

Q. 28. Do you understand what they mean when they simply say, "Webster's dictionary?" A. As a rule when they ask for a Webster's dictionary, they mean a dictionary of the English language. You asked me if I knew what they mean.

5591

Q. 29. If one of this remaining quarter comes in and asks for a Webster's dictionary, what do you show him? A. Show him what we have in stock—various kinds.

Q. 30. Various kinds of what? A. Of Webster's dictionaries.

Q. 31. When a customer comes in and asks for a Webster's dictionary, do you understand him to mean a Webster's dictionary published by any particular publisher? A. No.

5592

Q. 32. When a customer comes in and asks for a Webster's dictionary, how does he as a rule select between the Webster's dictionaries published by various publishers which you show to him? A. I can explain that fact, if a man comes in for a Webster's dictionary—what we have in stock, we generally take one out there and show it to him, and as a rule his decision is based upon his likes as far as the printing is concerned, the binding and the price.

August E. Eckle—Direct.

5593

Q. 33. Is it a usual thing for a customer to come in and ask for a dictionary by such a particular title as Funk & Wagnall's Standard or Lippincott's Worcester? A. Is it usual?

Q. 34. Yes. A. Well, I will answer that by saying that it is not general.

Q. 35. About what proportion of the whole buyers of dictionaries ask for a dictionary by a particular detailed title? A. About a quarter.

5594

Q. 36. Then, you wish to correct your earlier statement, which was, that of that quarter you spoke of a large proportion do not mention any more detailed title than simply Webster's dictionary or Standard dictionary?

MR. HALE: Objected to as leading and an attempted cross examination of defendant's own witness.

MR. CARROLL: The desire is simply to bring out what is in the witness' mind and have the witness understand the questions which are put to him.

5595

A. On that first question—three quarters of the people simply come in for a dictionary. The balance—the other quarter come in for some specified dictionary. I believe that answers that last question.

Q. 38. About what part of the remaining quarter come in and ask for simply Webster's dictionary? A. Well, that I could not answer, because they are just as liable to ask for a Century or a Funk & Wagnalls or an International—that is, any of the special ones—for special reasons they want one of those dictionaries.

5596

Q. 39. About what proportion of that remaining quarter come in and ask for a Webster's dic-

5597

August E. Eckle—Direct.

tionary by some more particular title, like Ogilvie's Imperial or Merriam's International, or something of that kind? A. What proportion of the—

Q. 40. Of that remaining quarter?

MR. HALE: The question is objected to as asking the witness to guess.

5598

MR. CARROLL: The question is directed to discover the experience of this witness, and from his experience he is able to divide the general class of customers, into certain special classes.

A. I cannot give the proportion of the remaining quarter. I can explain it, can I?

5599

Q. 41. Yes. A. Because, as I said before, they are just as liable to come in and ask for a Student Standard or one published by Funk & Wagnalls, or an International, or the Imperial dictionary—just as liable to do it. I never gave it a study about the proportions. It surely would be a guess.

Q. 42. What do you do when a customer comes in and asks for a dictionary? A. Show them a dictionary from the stock.

Q. 43. Do you show him all the dictionaries you have in stock? A. No. Will I explain more fully?

5600

Q. 43. Surely. A. A customer comes in and asks for a dictionary. Generally the first thing we go down the shop and show it to him. If he is not satisfied we show him another—show him different kinds. Of course, if we show him a dictionary, and he says, "I will take it," why, that ends it.

Q. 44. Where you show customers more than one dictionary, how do those usually determine

August E. Eckle—Direct.

between those shown to them, which one they will take? A. My experience has been that it is based a great deal upon the price that the party wishes to pay. Naturally a customer will look at the print, the binding and the price.

Q. 45. Do these three-fourths of the dictionary customers ever show any interest in the publisher of the dictionary? A. Some.

Q. 46. How do they show that interest? A. They will ask, "Have you got a dictionary published by Funk & Wagnall, the Standard Dictionary, published by Funk & Wagnall," or one of the special dictionaries they ask for.

Q. 47. I think you misunderstood my question. I therefore repeat the question: "Do these three-fourths of the dictionary customers ever show any interest in the publisher of the dictionary," and I ask you to state first whether you misunderstood that question before? A. I did. I misunderstood the question before.

Q. 48. You therefore wish to change your answer to it? A. I do.

Q. 49. What is your present answer, now that you understand the question? A. They do not.

Q. 50. What did you think I referred to? A. Referring to the question of the remaining quarter of the people who come in and buy dictionaries.

Q. 51. Would you say that as many as half of the remaining quarter who come in ask for just a Webster dictionary.

MR. HALE: This leading form of examination is objected to.

A. I would not.

Q. 52. Do any of that remaining quarter come

5605

August E. Eckle—Direct.

in and ask for a dictionary by the general title, "Webster's Dictionary"? A. They do.

Q. 53. Do any appreciable proportion of that remaining quarter ask for a dictionary by the general title of Webster's dictionary?

MR. HALE: Objected to as leading.

A. Yes.

5606

Q. 54. About what proportion of them? A. That I could not say. There are some. That is the only way I can answer that.

Q. 55. What do the rest of them ask for? A. The rest of the quarter?

Q. 56. Yes? A. Ask for some specified dictionary.

Q. 57. When they ask for simply a Webster's dictionary, what do you show them? A. The ones we have in stock.

5607

Q. 48. When you show them the Webster's dictionaries which you have in stock, do they evince any interest in the publisher of those various Webster's dictionaries? A. The remaining quarter?

Q. 49. The persons who come in and ask simply for a Webster's dictionary, do they evince—those are the ones we are talking about now? A. Yes.

5608

Q. 50. Do they evince any interest in the publisher of the various dictionaries which you show them? A. No.

Q. 51. Where a customer comes in and asks for a dictionary by some particular title, like Ogilvie's Imperial, or Merriam's International, or Funk & Wagnalls' Standard, can you sell them any other book, or do you try to sell them any other book?

August E. Eckle—Direct.

5609

MR. HALE: I object to that as incompetent, irrelevant and immaterial.

A. We don't try.

Q. 52. Have you recently made a special investigation of the public understanding of the word "Webster" in the title of dictionaries? A. I have.

Q. 53. What was the method adopted by you in making that investigation? A. Going to the person I met and asking them if they would kindly give me what knowledge they had of Webster's dictionary, and then I would ask them certain questions. 5610

MR. HALE: This question and answer and the line of examination which it apparently begins, is objected to as incompetent, irrelevant and immaterial; also as calling for hearsay statements of unnamed and uncalled persons who are not subjected to cross examination; also as a transaction with third persons not in the presence of the defendants, and not binding upon the defendant in any way. 5611

MR. CARROLL: IT IS STIPULATED that this objection should apply to all questions and answers upon this line without being specifically repeated to each.

Q. 54. What were those questions? A. 1. Do you know who is the publisher or who are the publishers of "Webster's Dictionary"? 2. When you hear or see the name "Webster" on a dictionary does it indicate to you a Dictionary gotten out by any particular publisher or at any particular place? 3. Do you know any city or cities where 5612

August E. Eckle—Direct.

5613

any "Webster" dictionaries are published? 4. Do you know of any series of succeeding rewritings of "Webster's" dictionary gotten out by any one publisher? 5. Who do you think wrote the definitions and fixed the spelling of the words to be found in the "Webster's" dictionaries you have known about? 6. When do you think those definitions were written and that spelling fixed?

5614

Q. 55. How did you select the persons examined? A. At random.

Q. 56. In what towns did you select them? A. In Bridgeport, Danbury, Meriden, New Britain, Waterbury and New London.

Q. 57. What did you tell them about the purpose of the questions? A. That I wished to gain facts or statistics regarding the Webster's dictionaries, what the knowledge people at large had of Webster's dictionaries.

5615

Q. 58. Did you indicate in any way what answers you wished to get to the questions? A. I did not.

Q. 59. Did you receive any instructions as to the method of conducting the investigation? A. I did.

Q. 60. And was that in the form of a letter? A. In the form of a letter, yes.

Q. 61. Have you a copy of that letter? A. I have. (Produces letter).

5616

Q. 62. Is this the letter (handing)? A. That is the letter.

MR. CARROLL: I offer it in evidence.

MR. HALE: Objected to upon all the grounds stated in the reserved objection, and upon the further ground that evidence

August E. Eckle—Direct.

561

cannot be made for one party in that manner.

MR. CARROLL: Subject to that objection, it is stipulated that the letter may be set forth in full in the record. The letter is as follows:

May 29th, 1912.

Mr. August E. Eckle, 1 West 125th Street, New York.

5618

Dear Sir: In connection with your investigation for the Syndicate Publishing Company, please remember that your testimony can only be of value to the Court in determining what the term "Webster's Dictionary" means to the general public, if you obtain your special knowledge and information in an absolutely fair and impartial manner. Be careful to ask the questions which have been prepared for you exactly in the order indicated and in the same exact words in each case. If possible obtain the answers from persons picked at random in the various towns visited without explaining the purpose of the question. In other words, do not in any way suggest to them the kind of answer which you want them to make. If necessary you can say you are obtaining statistics concerning the popular understanding of the word "Webster." In each case write down at once the name, address and occupation of the person questioned and the answer to each question. Include in your record without except the answers of all of the persons whom you question, as well those who answer unfavorably as those who answer favorably.

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In truth your purpose is to collect accurate sta-

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August E. Eckle—Direct.

tistics for the Court as to the meaning which the general public attaches to the word "Webster" in the title of a dictionary.

Very truly yours,
(Signed) Gould & Wilkie,
by Lauren Carroll.

5622

Q. 63. Did you follow those instructions exactly? A. I did.

Q. 64. About how many people did you examine? Between two and three hundred.

Q. 65. Did all of them answer those six questions? A. No.

Q. 66. About how many of the persons whom you approached gave you answers to the six questions? A. Can I answer that by making an explanation?

5623

Q. 67. Any way you want to? A. I saw between two and three hundred people, and got a great many of them, and took records of only part of them. I make mention of that by way of an explanation.

Q. 68. How many of the people whom you approached answered the six questions which you asked them? A. I have a record of—

5624

Q. 69. I am not asking you what you have a record of. I am asking you how many answered the questions? A. About seventy-five per cent of the people I saw.

Q. 70. How many in numbers was that seventy-five per cent? A. I should say about one hundred and seventy-five.

Q. 71. Did you keep a record of all those answers? A. I did not.

August E. Eckle—Direct.

5625

Q. 72. Why did you not? A. For the reason it was a misunderstanding. I wanted the name, address and occupation of everybody that I approached, and I only kept a record of those that I received their name and address and occupation.

Q. 73. How many did you keep a record of? A. Sixty-one.

Q. 74. How did those sixty-one differ from the other one hundred and seventy-five? A. About the same answers. 5626

MR. HALE: The answer is objected to as being a mere conclusion of the witness, in addition to the other grounds specified.

Q. 75. From your examination of these one hundred and seventy-five persons, some of them named and some of them unnamed, who gave you answers to the six questions set forth above—will you state whether or not any of them knew the name of the publisher or publishers of Webster's dictionaries? A. Some of them mentioned names. 5627

Q. 76. About how many of the hundred and seventy-five mentioned names? A. I should judge about ten per cent.

Q. 77. About how many in numbers? A. That would be seventeen—about.

Q. 78. What names did they mention?

MR. HALE: Objected to upon the grounds previously stated and upon the further ground that it calls for hearsay testimony of a mere guess of unnamed persons. 5628

A. Rand & McNally, Lee, Miles.

Q. 79. Did any of them mention the name of

5629

August E. Eckle—Direct.

Merriam Company? A. Say, I will add Merriam to that last question—once.

Q. 80. From your examination of these persons are you able to state whether or not the general public know the name of any city or cities where Webster's dictionaries are published? A. I am.

Q. 81. Does the general public know? A. They do not.

5630

Q. 82. Did any of the persons examined by you name any city or cities where Webster's dictionaries are published? A. They did.

Q. 83. What cities did they name? A. New York, a firm in Springfield, Hartford, Connecticut, Philadelphia, South Lancaster.

Q. 84. How many answered a firm in Springfield? One.

5631

Q. 85. From your examination of those persons can you state whether or not the general public knows of any series of succeeding rewritings of Webster's dictionary? A. I can.

Q. 86. Does the general public know of any series of succeeding rewritings of Webster's dictionary? A. They do not.

Q. 87. Did any one person examined by you state that they knew of such a series? A. No.

5632

Q. 88. From your investigation will you state who the general public thinks wrote the definitions and fixed the spelling in the Webster's dictionaries which they have known about? A. Webster.

Q. 89. Did any of the persons examined by you answer anything different from Webster? A. No.

Q. 90. Is that so without exception? A. Well, when I say a good many people could not answer it, they could not give the question—they could

not think of anything of that nature; and only those that answered that question, they gave it as a general thing, Webster. Oh, yes, I would like to correct that again. There are some other names and ideas that they gave, but the general run was Webster.

Q. 91. About what date does the general public think the definitions and spelling of Webster's dictionaries were written and fixed? A. A long time ago, running from twenty-three to eighty years.

5634

CROSS EXAMINATION by Mr. Hale:

x Q. 92. Did any of these persons interviewed mention the Syndicate Publishing Company as the publisher of Webster's dictionaries? A. Not one.

x Q. 93. Did any of them mention Cupples & Leon Company as a publisher of Webster's dictionaries? A. No.

x Q. 94. The vast majority simply did not know the name? A. Did not know the name.

5635

x Q. 95. Of the publisher of any Webster's dictionary? A. Yes.

x Q. 96. You have mentioned that some of these people expressed their ideas as to who composed the literary contents of the Webster's dictionary, meaning other than that they were written by Webster. What ideas did they express? A. What was my answer to the question?

x Q. 97. (Answer repeated as follows) "Well, yes, I would like to correct that again. There are some names and ideas that they gave; but the general run was Webster." A. Yes. Now, please, the question.

5636

x Q. 98. I want to know the other part of it? A. There was other names. "Webster's idea; Webster wrote some of them"—some of the

August E. Eckle—Cross.

637

answers I got. "A couple of men wrote that." "Daniel Webster." "Never gave it a thought." "No idea." "Some men in Massachusetts." Those are some of the answers I got.

x Q. 99. How did you come to make this investigation? A. At the request of the Syndicate Publishing Company.

x Q. 100. And you were paid for it, of course? A. Yes.

5638

x Q. 101. How much time did you spend upon it? A. Seven days.

x Q. 102. When? A. During the past week.

x Q. 103. With whom did you have any conversation as to this proposed investigation by you? A. With whom?

x Q. 104. Yes. A. Mr. Adair.

x Q. 105. Of the Syndicate Publishing Company? A. Of the Syndicate Publishing Company.

5639

x Q. 106. And he instructed you as to what was wanted? A. He—yes, my instructions came through from Mr. Carroll then. He referred me to Mr. Carroll. Simply wanted to know if I would go out on this investigation.

x Q. 107. Have you ever had any business with the Syndicate Publishing Company? A. No.

5640

x Q. 108. Ever handle any of their books? A. I might have some years ago; not lately. I don't recall it. You know, they have been publishing right along a great many things. That was way back.

x Q. 109. How did you come to be selected by Mr. Adair to make this investigation? A. I was sent for.

x Q. 110. By whom? A. I was sent for by Mr. Leon.

x Q. 111. Of the firm of Cupples & Leon? A. Of the firm of Cupples & Leon.

x Q. 112. Have you done business for that firm?
A. I have done some. At least, I have done business with every other firm in the country.

x Q. 113. Have you ever had any other business connection with that firm than selling their books?

A. Yes, buying and selling their books, that is all.

x Q. 114. Are you personally acquainted with the members of that firm? A. Like every other firm I had business with that is in the book business.

5642

x Q. 115. How did Mr. Leon come to request you to make this investigation?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, this witness having no knowledge of how Mr. Leon came to request him.

A. Simply coming in contact with him for years as a member of the firm.

5643

x Q. 116. And Mr. Leon of the Cupples & Leon Company referred you to Mr. Adair of the Syndicate Publishing Company? A. Syndicate Publishing Company. We had no conversation about anything at all; simply asked me to go over there and wanted to know if I had a few days time to spare.

x Q. 117. You have named several books which use the name "Webster" which were not published by the Merriams, and among others you name the book of the Cupples & Leon Company? A. Yes.

5644

x Q. 118. What is the name of that book? A. Webster's New Century.

August E. Eckle—Cross.

5645

x Q. 119. How long have you known of that book? A. About five years; four or five years.

x Q. 120. Have you handled it for that period of time? A. Off and on, yes.

x Q. 121. What are the names of the Laird & Lee books, if you know? A. I could not tell you off hand.

5646

x Q. 122. The book published by Hill which you say is now handled by McKay was a small vest pocket dictionary? A. Yes.

x Q. 123. Was any change in the title made when Mr. McKay took it over? A. I don't think so.

x Q. 124. In your book business, have you bought your stock of Webster's dictionaries from the publishers or has someone else done that for you? A. Publishers or through job lots—which-ever way it came.

5647

x Q. 125. Therefore, you are familiar with the names of the publishers of the various dictionaries? A. Yes.

x Q. 126. You have a special familiarity in that matter which the average customer or purchaser does not have? A. Sure.

x Q. 127. How many calls did you have for Webster's dictionary? A. Very few.

x Q. 128. And that has been true for a period of years? A. Yes.

5648

x Q. 129. I presume you have vastly more inquiries for a Webster's dictionary than you have for a Worcester's dictionary? A. Yes.

x Q. 130. You have stated that customers frequently come in and say at first that they merely want a dictionary. In subsequent conversation with that class of customers, do they sometimes indicate that they are interested in Webster's dic-

tionary or mention the name "Webster?" A. Yes.

x Q. 131. What is the course of procedure when they inquire about a Webster's dictionary? A. Show them what we have.

x Q. 132. Both those published by Merriam and those published by other concerns? A. Immaterial.

x Q. 133. Would you explain the difference between them? A. If they should—if a customer should ask that, by all means.

5650

x Q. 134. If a customer should ask what? A. If there is any difference.

x Q. 135. Then, what would you explain? A. Explain the publisher.

x Q. 136. If they do not ask that, then what do you do? A. Simply let them choose for themselves.

x Q. 137. In other words, in that class of cases you allow them to select the book, which in style of print, binding and price meets with their approva? A. Yes. A man might ask my opinion of a certain dictionary and I would give him my opinion to the best of my knowledge, whatever the dictionary was.

5651

x Q. 138. I presume purchasers are interested in the literary excellence of the contents of the dictionaries? A. They do as a rule. They buy a dictionary as a rule simply for the spelling. I am taking about the average people now—simply to get the definition of it.

5652

x Q. 139. I presume they want the definition and spelling to be accurate and correct, according to gool usage? A. That is presumably so, that everybody wants everything is correct. If you want a book you want it well-bound. It is nat-

August E. Eckle—Cross.

5653

ural—and the print and paper also. They look at that also.

x Q. 140. I presume the average purchaser is not qualified to be a critical judge of such matters? A. Yes; you are right.

x Q. 141. He therefore buys a dictionary very largely upon faith as to what he will find in it? A. Yes.

5654

x Q. 142. Do you ever meet with customers who prefer the Standard dictionary of Funk & Wagnalls to the Merriam dictionary? A. I do, and vice versa.

x Q. 143. I presume some prefer the Century? A. Yes.

x Q. 144. And very few Worcester's? A. Very few.

5655

x Q. 145. Does the average purchaser know that there is any distinction between the various dictionaries published under the name of "Webster?" A. No.

x Q. 146. Are you the Mr. Eckle who made an affidavit on behalf of the defendant in this case? A. I am.

x Q. 147. In that affidavit, which is verified the 27th day of February, 1912, I find the following statement:

5656

"No one could properly associate a publisher with the title of a dictionary, the title applying rather to the contents, that is, to the product of the editor's or compiler's mind." Is that statement true?

MR. CARROLL: I object to that question, inasmuch as it begins the quotation in the middle of a sentence, and the question should be restated so as to include the whole sentence.

August E. Eckle—Cross.

5657

MR. HALE: I will make this statement—not as a question. The only words omitted were the three words, “In Deponent’s mind;” and if counsel wishes to suggest that the opinion of his witness is not in accordance with the facts, of course, there is no objection to his doing so.

A. That is true, brought down by my experience and my contact with the general public.

5658

x Q. 148. In that same affidavit did you express the opinion that “None of the dictionaries which are now being published and sold by any one of the various publishers could be properly considered a genuine Webster’s dictionary?”

MR. CARROLL: I object to the form of the question, inasmuch as it does not fully state the sentence from which it is taken, and on the further ground that the meaning of the words are entirely varied by the introduction of that sentence, which is: “Under this definition of a genuine Webster’s dictionary, none of the dictionaries,” and so forth.

5659

A. Yes.

x Q. 149. I will quote the whole of the paragraph upon this subject from your previous affidavit: “That deponent has never heard the term “Genuine Webster’s Dictionary” used in the trade. He therefore does not know exactly what it might mean. It probably would mean, however, one of the original dictionaries which was entirely prepared by Noah Webster himself. This would seem to be the only dictionary which could be called genuinely “Webster’s.” Under this definition of a genuine Webster’s dictionary, none of

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5661

August E. Eckle—Cross.

the dictionaries which are now being published and sold by any one of the various publishers could be properly considered a "Genuine Webster's dictionary." Is that your present opinion?
A. It is.

5662

x Q. 150. How did you come to express an opinion upon what constitutes a genuine Webster's dictionary? A. It has always been of large interest to me in discussing it at various times. I dare say that is how it was.

5663

MR. CARROLL: It is stipulated upon the record that counsel for defendant asked this witness the question as to whether or not there was the term "Genuine Webster's dictionary" used in the trade. That term was suggested to him by the examination of the complainant's witnesses, the term having been used in the questions of complainant's counsel.

MR. HALE: Complainant has nowhere suggested that the phrase "Genuine Webster's Dictionaries" is a trade term.

x Q. 151. In other words, it has been a question in your mind whether there were both genuine and bogus Webster's dictionaries; is that correct?
A. That did not enter my mind.

5664

x Q. 152. What did enter your mind upon the question of genuineness? A. Genuineness—simply the original Webster's dictionary.

x Q. 153. And do you mean to say that it never occurred to you that some dictionaries might be genuine Webster's dictionaries and some not?

MR. CARROLL: Objected to inasmuch as it has already been stated in the affidavit

August E. Eckle—Re-Direct.

5665

what this witness considers as a genuine Webster's dictionary.

A. Yes, certainly.

x Q. 154. That question did occur to your mind? A. Why, surely.

x Q. 155. And you answered it in the manner quoted in your affidavit; is that correct? A. Yes.

x Q. 156. And that is altogether your own opinion on the question? A. Yes.

5666

x Q. 157. Do you recollect any instance where any customer ever asked for a Webster's dictionary of the Merriam publication? A. That is probable.

x Q. 158. That does occur? A. Oh, yes.

x Q. 159. Not infrequently? A. Not infrequently.

x Q. 160. Do you ever explain to a customer any difference between the Webster's dictionaries of the Merriam Company and the Webster's dictionaries of other concerns? A. If they ask me to.

5667

x Q. 161. Not otherwise. A. Not otherwise.

x Q. 162. How often are you asked? A. Sel-

dom.
x Q. 163. And you attribute that to the fact that the average purchaser does not see any difference in the question—it does not occur to him? A. I do.

RE-DIRECT EXAMINATION by Mr. Carroll:

5668

Re-D. Q. 164. What difference do you think there is between Ogilvie's Imperial Webster, for example, and Webster's International?

MR. HALE: Objected to as irrelevant, incompetent and immaterial and not proper re-direct.

5669

August E. Eckle—Re-Direct.

MR. CARROLL: This question is made necessary by the suggested distinction between dictionaries of the Merriam Company and dictionaries published by other publishers which has been attempted to be made by cross examination.

A. Personally I like the Imperial.

5670

Re-D. Q. 165. If any one of the customers had asked you which one of these books you thought was better, which one would you have said?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and dealing with the merit of books not in issue.

A. I would recommend the dictionary that I favored—that is, the Imperial.

Re-D. Q. 166. Did you ever recommend this book to customers? A. The Imperial.

5671

Re-D. Q. 167. Yes. A. Yes.

Re-D. Q. 168. Above the Merriam books? A. Yes, I did.

Re-D. Q. 169. Did that happen frequently? A. Occasionally.

Re-D. Q. 170. Did it frequently happen that customers came in and asked for Merriam's publications? A. They have asked for them.

Re-D. Q. 171. That wasn't frequent, though? A. Not frequent, though.

5672

MR. HALE: Counsel is requested not to lead the witness.

MR. CARROLL: Counsel for complainant has already led the witness so much that it is necessary to lead the witness back to the proper fact.

Re-D. Q. 172. Did any one of the persons examined by you in this last investigation show you a dictionary published by the Syndicate Publishing Company? A. Yes.

Re-D. Q. 173. What were the circumstances of that incident? A. I was trying to get what information I possibly could, and that was one of the cases where they mentioned the fact that what interested them was a dictionary, and when we got through he says, "Here is a dictionary," he says,—*"I got, and it is a good one."* 5674

Re-D. Q. 174. What dictionary was it? A. It was one published by the Syndicate.

Re-D. Q. 175. A. Webster's dictionary published by the Syndicate Publishing Company? A. Yes.

Re-D. Q. 176. Who was that person? A. Mr. Wolmer, I believe.

Re-D. Q. 177. What was his position? A. I could not state exactly his position; but he was in the American Express Company in New London. 5675

Re-D. Q. 178. Among the persons examined by you did those who did not know the name of any publisher of Webster's dictionaries indicate that they associated Webster's dictionary with any particular publisher named or unnamed? A. No.

Re-D. Q. 179. Mr. Hale asked you on cross examination whether there were not vastly more Websters asked for than Worcesters, in the general course of trade. What did you understand him to mean by "vastly"? A. Greatly. 5676

Re-D. Q. 180. Did you mean any more by the statement than that of the one-fourth who named any dictionary at all there were many more who asked for a Webster's dictionary than asked for a Worcester's dictionary?

5677

Robert McKnight—Direct.

MR. HALE: Objected to as incorrectly stating the questions asked and the testimony given, no reference having been made to any one-fourth of anything. The question is also objected to as leading.

5678

A. That can only be explained this way, in that one-fourth we were talking about there were a number of dictionaries asked for. Amongst them there was Webster's, Worcester's, and Funk & Wagnalls and the Century Dictionary, and all these dictionaries combined are asked for more than Webster's dictionary.

DEPOSITION CLOSED

Signature of witness waived by consent.

5679

ROBERT MCKNIGHT, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Give your age? A. Forty-seven.

Q. 2. Residence? A. Philadelphia.

Q. 3. More particularly? A. What street?

Q. 4. Yes. A. 703 South 55th Street, Philadelphia.

5680

Q. 5. Occupation? A. Salesman.

Q. 6. Are you a salesman of books? A. No, I would say stationery now, although my business has been books strictly up to within a few months.

Q. 7. What has been your experience in the book business? A. Thirty years.

Robert McKnight—Direct.

5681

Q. 8. During that thirty years, what has your experience been? A. Mostly as manager in connection with the business.

Q. 9. In connection with what business? A. Book business.

Q. 10. Could you name some of them? A. I was connected, for instance, with Siegel-Cooper Company, Chicago; Simpson-Crawford Company, New York; American News Company, New York.

5682

Q. 11. During that thirty years in the book business, did you personally have dealings with retail customers? A. Yes.

Q. 12. Did you during all of that time have in stock in the various stores where you were employed dictionaries of various kinds? A. Yes, sir.

Q. 13. Among those dictionaries were there Webster's dictionaries? A. Yes, sir; both the original and reprints.

5683

Q. 14. Do you remember the names of the publishers of those Webster's dictionaries? A. Yes.

Q. 15. Could you give them? A. Laird & Lee, E. A. Weeks Company, Donahue & Company, American Book Company, Merriams, George Hill—I could give you an endless list. Do you want it?

Q. 16. Yes; all you remember? A. Hurst & Company—I think I will take that back. He ran that under Peabody. He didn't run that under Webster.

5684

MR. HALE: Hill is the last name I have.

THE WITNESS: Yes, George Hill. Then there used to be Alden & Company. That is all I can just recall at present.

5685

Robert McKnight—Direct.

Q. 17. Do you remember what ones of these were what you call reprints? A. There was Donahue there—Hill and Alden—nearly all of them outside of Merriams—no, the Merriam Book Company would not be a reprint, but the rest were.

5686

Q. 18. Were not those books reprints? A. No, they were not reprints. They were made by himself. They were not taken up as reprints. They were small dictionaries.

Q. 19. Were all of Donahue's books which you handled reprints? A. Yes.

Q. 20. Did you ever handle any of Winston's Websters? A. Yes.

Q. 21. Were they reprints? A. No.

5687

Q. 22. From your experience during thirty years, coming in personal contact with retail customers, what does the ordinary person wishing to buy a dictionary ask for? A. For a dictionary.

Q. 23. When a person comes in and asks for a dictionary, what do you show him? A. Well, I ask them up to what price they want to pay. If they want a cheap book, you can show them some of these reprints. If they want a genuine book you show them the standard books.

Q. 24. Like Funk & Wagnalls? A. Like Funk & Wagnalls.

5688

Q. 25. And Lippincott's Worcester? A. Yes.

Q. 26. Where a person comes in and asks for a book by a particular title, do you ever succeed in selling them anything else? A. Yes.

Q. 27. For example? A. For example, suppose they come in and ask—we will sell them the things we can make the most money on. That is the story there.

Q. 28. Have you latterly been dealing in Winston's Webster's dictionary? A. Last Christmas season I sold quite a bunch of Webster's Universal dictionaries, published by the Winston Company.

Q. 29. Was this in Philadelphia? A. That was in Philadelphia, yes.

Q. 30. Was one of the newspaper campaigns in connection with the Syndicate Publishing Company's book being carried on in Philadelphia at that time? A. That was being conducted at that time. 5690

Q. 31. With what paper was it being conducted? A. It was the Philadelphia Press.

Q. 32. Did that campaign of the Philadelphia Press help the sale of the Winston's Webster's which you were dealing with? A. I believe it did, to a pretty fair extent, although we were advertising the other book ourselves; but by comparison we made a large—the folks would come in evidently having seen the advertisement of the Press. 5691

Q. 33. Would some customers come in and ask simply for a Webster's dictionary? A. No; they would come in and ask for the—in that case, in the case in point, they would come in and ask for the book advertised, and then the question would arise, "Is this the book put up by the Press." In that way I discovered I was getting benefit from the Press advertising. 5692

Q. 34. Did you explain to them that that was not the book advertised by the Press? A. I explained to them that that was not the book advertised by the Press. That, of course, was where we brought in salesmanship. We had a better book.

5693

Robert McKnight—Cross.

Q. 35. What finally induced the buyers to take your book? A. I think the price.

Q. 36. What was your price? A. My price was eighty-five cents, against the price of ninety-eight cents of the Press.

Q. 37. And this was after they knew that you were advertising a different book? A. Yes.

5694

Q. 38. From your experience in the book business, will you state whether or not the ordinary purchaser of a Webster's dictionary knows anything about the publisher of the dictionary? A. I don't think they do. I don't think they know anything about it.

Q. 39. Do you think they care about the publisher of the dictionary? A. They do not.

5695

Q. 40. Do you think the average public ever heard of any series of succeeding rewritings of Webster's dictionary gotten out by any particular publisher?

MR. HALE: I object to that as calling merely for a conclusion of the witness, and without first showing any basis for it.

5696

A. I think they have to a certain extent. That is where the thing has been advertised and explained. In the case of dictionaries which I say I sold in Philadelphia there, of course, we exploited it in that way, showing where the additions had been made by various people; but I don't think to any large extent it has come into play with the public.

CROSS EXAMINATION by Mr. Hale:

x Q. 41. While you were engaged in selling books with the several concerns you have mentioned, have you always carried both the Web-

ster's dictionaries of the Merriam Company and the so-called Webster's dictionaries of other concerns?

MR. CARROLL: I object to the form of that question on the ground that the dictionaries called Webster's dictionaries are presumptively Webster's dictionaries; the characterization of them as "so-called Webster's dictionaries" is uncalled for.

5698

A. Yes.

x Q. 42. When did you first begin to handle Webster's dictionaries not published by the Merriams? A. How would you put that—as the reprint books?

x Q. 43. Well, you may say, at the time the reprint books came out, and if you can fix a date, why, give it? A. That came out about '93.

x Q. 44. About how much later did you begin to handle smaller dictionaries under the name of Webster's which were not published by the Merriams? A. About five years later.

5699

x Q. 45. You stated that you handled both original and reprint Webster's dictionaries. What book did you mean by the term "original?" A. That is a book published by the Merriam Company.

x Q. 46. At that time? A. Yes.

x Q. 47. You did not mean by that term one of the earlier obsolete editions of Webster's dictionaries? A. No.

5700

x Q. 48. Do you remember the full specific name as "Webster's International Dictionary" or something of that sort? A. Webster's International.

Robert McKnight—Cross.

5701

x Q. 49. That was the book you referred to by the term "original"? A. Yes.

x Q. 50. Did you have anything to do with buying the book stock for the various concerns with which you were employed? A. Yes.

x Q. 51. And you bought these Webster's dictionaries from the various publishers whom you have named? A. Yes.

5702

x Q. 52. Did the American News Company sell these books at retail? A. Their strictly wholesale price.

x Q. 53. In other words, while you were selling dictionaries for the American News Company you were selling to the trade? A. To the trade, yes.

5703

x Q. 54. You have stated that when a customer wanted a genuine book you would show him a Funk & Wagnalls' Standard—for example—if he wanted a genuine Webster's dictionary, what would you show him? A. Webster's International.

x Q. 55. Do you know how long the Winston concern has been using the name "Webster" in the title of their dictionary? A. I do not, sir.

x Q. 56. That has been a comparatively recent thing, has it not? A. I have handled that dictionary for the last two years, I think, and how long previous to that they have been making that book, why, I could not say.

5704

x Q. 57. Have you any information as to the fact that they published it for a time without using the name "Webster" in connection with it? A. No, I have not.

x Q. 58. Do you know the full title of the dictionaries of Laird & Lee, referred to by you? A. I cannot just recall them at the present time.

x Q. 59. And do you recollect the title of the dictionary of the Weeks Company? A. That was afterwards changed. As I recall that, that was Worcester's—now, I can't just recall that title.

x Q. 60. What kind of a book was it? A. A little vest pocket book.

x Q. 61. And do you recall the title to which that was changed? A. No, I can't just recall that other.

5706

x Q. 62. Do you recall the titles of the Donohue dictionaries? A. I think that was the original.

x Q. 63. You mean a reprint of the expired book? A. Yes.

x Q. 64. The dictionaries of the American Book Company, I presume you know, are dictionaries published by the Merriams? A. They are the Webster books, yes.

x Q. 65. The Hill dictionary was a reprint? A. That was a reprint, yes.

5707

x Q. 66. How about the Alden & Company. A. That was a reprint.

x Q. 67. How long since these reprints have been largely sold in the market? A. How long?

x Q. 68. Yes. A. Well, I commenced to sell them originally about along in 1893.

x Q. 69. And have you sold them continuously since? A. Yes.

x Q. 70. At what prices? A. Various prices.

5708

x Q. 71. The general range, please? A. Well, anywheres from a dollar up.

x Q. 72. Up how far? A. Up to two or three dollars.

x Q. 73. When customers come in and ask for a Webster's dictionary, what is the ordinary course of procedure from that point until the sale

5709

Robert McKnight—Cross.

is effected? A. The question would naturally arise, "What do you want? A small or a large dictionary?"

x Q. 74. And presuming they say they want a small dictionary at a comparatively small price? A. Well, then, some of these cheaper books would be shown.

5710

x Q. 75. You would show them your entire stock and allow them to select for themselves, whichever one they prefer? A. To a certain extent, yes.

x Q. 76. And what are the limitations of that extent? A. Your stock. First, the limitation of stock—when I spoke there about selling that Winston dictionary in Philadelphia, or the Winston's book—there was nothing else there to show.

5711

x Q. 77. Do you explain to the customers asking for a Webster's dictionary that there are various editions or series of it gotten up by different publishers? A. Yes.

x Q. 78. You always explain that? A. Generally explain.

x Q. 79. And do you ever explain to them that the Merriam Company are the long-time established publishers of Webster's dictionaries? A. No, I don't think I do. I don't think that question would arise with us.

5712

x Q. 80. You have stated that in your opinion the average purchaser cares nothing whatever about the publisher of the dictionary which he buys. Is that correct? A. Yes.

x Q. 81. What is it that he does care about? A. The words and definitions.

x Q. 82. In other words, the literary contents of the book? A. The literary contents of the book.

RE-DIRECT EXAMINATION by Mr. Carroll:

Re-D. Q. 83. What requirements does an ordinary purchaser have with respect to spelling and definitions—so-called literary contents of the book? A. Well, it is virtually up to themselves. You will find that possibly what has been up in the minds of purchasers of a good many dictionaries has been discussion of some special word, and they look for that special word, and if they find it there they buy it. I was just about to quote an occurrence that occurred to me last evening. My daughter asked me for the spelling of a word. I said, "Go to the dictionary." She said, "I haven't got a dictionary here. That is at home." I said, "By the way, what is that dictionary that is at home? What one is it?" She said, "I don't know." I said, "You have handled it a good many times. You ought to know what you have handled." She said, "No,"—she didn't know anything about it. "You have always told me when I didn't know the spelling of a word to go to the dictionary and I have been doing it." So, there is really the story of the majority of the purchasers of dictionaries. They want to have it in the house.

5614

5615

Re-D. Q. 84. You mean, they want to have a sort of assurance which will prepare them for the accident of needing the definition of a word? A. Yes.

5716

Re-D. Q. 85. You think this—and correct me if I am not stating your thoughts exactly—that the ordinary buyer of a dictionary has had it suggested to him by some advertising or by some discussion about the definition of a word, that it would be a wise thing to have a dictionary around the

5717

Robert McKnight—Re-Cross.

house, and he goes and gets one for as small a price as possible.

MR. HALE: Objected to as leading.

A. Well, that is really the case.

Re-D. Q. 86. So that what these people want is a dictionary, and not a Webster's dictionary published by some particular publisher?

5718

MR. HALE: Objected to as leading.

A. Well, I don't think that the majority—in fact, I should say nine out of ten people have in mind nothing special in reference to the buying of a dictionary. If they get a dictionary that suits them and the price is right, they will buy it.

Re-D. Q. 87. For how long were you employed by the American News Company? A. Two years as a salesman there.

5719

Re-D. Q. 88. During the rest of the thirty years which you have indicated you were in the book business, were you employed by retail houses? A. Retail houses, yes.

RE-CROSS EXAMINATION by Mr. Hale:

5720

Re-x Q. 89. Are the Webster's dictionaries pretty well known with the general public? A. That is such a general term that to answer that accurately, it would be a hard question. There are so many of these others known as Webster's, both originals, reprints and everything else, that I don't think that really the majority of folks know what they are asking for when they are asking for Webster's. They want a dictionary.

Re-x Q. 90. What is the reputation of Web-

Robert McKnight—Re-Cross.

5721

ster's dictionary as a standard authority? A. Good.

Re-x Q. 91. Does that have any effect on the sales in your opinion; or does that have anything to do with causing customers to ask for Webster's dictionary? A. In some cases.

DEPOSITION CLOSED.

Signature of witness waived by consent.

5722

Adjourned until June 13th, 1912, at 11 o'clock.

NEW YORK, THURSDAY, June 13, 1912.
11 A. M.

Met pursuant to adjournment:
Present: Counsel as before.

5723

The witness being unable to attend at this session an adjournment is taken, by consent, to 3:30 P. M.

Adjourned to same day at 3:30 P. M.

5724

5725

William M. Gray—Direct.

NEW YORK, THURSDAY, June 13th, 1912.
3:30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

5726

WILLIAM M. GRAY, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Will you give your full name? A. William M. Gray.

Q. 2. Age? A. Forty-eight.

Q. 3. Residence? A. New York.

Q. 4. Your more particular address? A. Bay-side.

5727

Q. 5. Occupation? A. Occupation, theatrical manager.

Q. 6. Have you recently made an investigation of the meaning which the general public attach to the name "Webster"? A. I have.

Q. 7. What was the method adopted by you in that investigation? A. I put a series of questions to people who were about to purchase dictionaries.

5728

Q. 8. How did you select the persons whom you questioned? A. I waited at the counter of a newspaper office where the dictionaries were being sold, and as they came there and presented their coupons and money, I questioned them.

Q. 9. Did you indicate in any way before asking the questions, what the purpose of the investigation was? A. I did not.

William M. Gray—Direct.

5629

Q. 10. Did you suggest in any way except by means of the questions themselves what answers you wished to get? A. No, sir.

MR. HALE: It is stipulated that this entire line of the examination of this witness shall be deemed subject to all the objections entered to the similar line of examination in the case of the witness Eckle heretofore examined and that the same need not be specifically repeated. 5630

Q. 11. What were the questions which you asked them? A. "Q. 1. Do you know who is the publisher or who are the publishers of Webster's dictionaries?" "Q. 2. When you hear or see the name 'Webster' on a dictionary does it indicate to you a dictionary gotten out by any particular publisher or at any particular place?" "Q. 3. Do you know any city or cities where any Webster's dictionaries are published?" "Q. 4. Do you know of any series of succeeding rewritings of Webster's dictionaries gotten out by any one publisher?" "Q. 5. Who do you think wrote the definitions and fixed the spelling of the words to be found in the Webster's dictionaries which you have known about?" "Q. 6. When do you think those definitions were written and that spelling fixed?" 5631

Q. 12. How many persons did you question? A. Two hundred and ninety-eight; that is to say, I received answers from two hundred and ninety-eight. 5732

Q. 13. How many more did you question who did not give answers? A. Possibly as many as twenty-five or thirty more.

Q. 14. What reasons did they give for not an-

5733

William M. Gray—Direct.

swering? A. They did not want to be bothered with it; they did not want to give their names and they did not want to appear too ignorant.

Q. 15. Did you receive any instructions as to the method which you should pursue in this investigation? A. I did, yes, sir.

5734

Q. 16. I show you a copy of a letter dated June 1st, 1912, and ask you if that letter contains the instructions which you received? A. Yes, sir, that is the letter.

MR. HALE: The letter is objected to as incompetent, irrelevant and immaterial, upon the grounds stated when the same letter was previously offered.

MR. CARROLL: It is stipulated that subject to these objections, the letter will be set forth at length in the record, and not kept as a separate exhibit.

5735

Said letter is as follows:

GOULD & WILKIE,
Counsellors at Law,
No. 2 Wall Street,
New York.

June 1st, 1912.

MR. W. M. GRAY,
Lamb's Club,

5736

138 West 44th Street, New York.

Dear Sir:

In connection with your investigation for the Syndicate Publishing Company, please remember that your testimony can only be of value to the Court in determining what the term "Webster's Dictionary" means to the general public, if you

William M. Gray—Direct.

5737

obtain your special knowledge and information in an absolutely fair and impartial manner. Be careful to ask the questions which have been prepared for you exactly in the order indicated and in the same exact words in each case. If possible obtain the answers from persons picked at random in the various towns visited without explaining the purpose of the question. In other words, do not in any way suggest to them the kind of answer which you want them to make. If necessary you can say you are obtaining statistics concerning the popular understanding of the word "Webster." In each case write down at once the name, address and occupation of the person questioned and the answer to each question. Include in your record without exception the answers of all of the persons whom you question, as well those who answer unfavorably as those who answer favorably.

5738

In truth your purpose is to collect accurate statistics for the Court as to the meaning which the general public attaches to the word "Webster" in the title of a dictionary.

5739

Very truly yours,

(Signed)

GOULD & WILKIE.

Q. 17. Did you follow these instructions? A. I did.

Q. 18. Exactly? A. Implicitly.

5740

Q. 19. In what city or cities did you carry on this investigation? A. Pittsburg, Cincinnati, Louisville and Milwaukee.

Q. 20. During how many days were you engaged in this investigation? A. Nine days.

Q. 21. Did the persons whom you questioned buy the dictionaries of the Syndicate Publishing

5741

William M. Gray—Direct.

Company at or about the time when you questioned them? A. They bought dictionaries called I believe the Websterian dictionary, which was sold by the newspapers in the various cities, and I believe was published by the Syndicate Publishing Company.

5742

MR. HALE: The answer is objected to and motion is made to strike it out upon the ground that it appears that these persons purchased a different dictionary from the one involved in this suit, and one having a different name. This is in addition to the general objections which are not waived.

5743

MR. CARROLL: The purpose of this question was simply to show the general class of the persons questioned to belong to that large general class whom it is alleged by complainant were deceived by the sale of defendant's dictionary in its old form.

Q. 22. From your experience in this investigation will you state whether or not the general public know the name of the publisher or the publishers of Webster's dictionaries?

5744

MR. HALE: Objected to upon the further ground that if this line of examination is competent at all, it is only competent in case the witness testifies to what was said to him upon these occasions, and it is not competent for him to draw his conclusions therefrom.

A. I don't believe that the general public knows or cares anything about the publisher of Webster's dictionary.

William M. Gray—Direct.

5745

MR. HALE: The latter part of the answer is objected to as not responsive and the whole answer is objected to as a mere conclusion.

MR. CARROLL: In order to meet your objection to the last part of the answer, I will ask another.

Q. 23. From your investigation, will you state whether or not the general public cares anything about the publisher of Webster's dictionary? A. From my investigation I should say not.

5746

Q. 24. From your investigation will you state whether or not the general public when it hears or sees the name "Webster" on a dictionary understands it to be a dictionary gotten out by any particular publisher or at any particular place? A. I don't think it does.

Q. 25. From your investigation will you state whether or not the general public know any city or cities where Webster's dictionaries are published? A. The people that I questioned as a rule did not know. There were a few who gave various large cities in the United States, such as Cleveland, Cincinnati, Milwaukee, New York and Boston.

5747

Q. 26. From your investigation will you state whether or not the general public knows of any series of succeeding rewritings of Webster's dictionary gotten out by any one publisher? A. No, it does not.

5748

Q. 27. From your investigation will you state who the general public thinks wrote the definitions and fixed the spellings of the words to be found in the Webster's dictionaries they have known of? A. Most of those that know at all or profess to

5749

William M. Gray—Cross.

know at all think that Webster did. Some gave Daniel Webster, a few gave miscellaneous publishers, such as—I will have to refresh my memory as to that name—(Witness refers to paper) Syndicate Publishing Company is one, Merriam Company one. There is some other concern here, if I can find it. One man gives Hiene Young, whoever he is. Despatch Publishing Company is another one given. That was in Pittsburg, where the paper, the Despatch was giving out the books. I cannot find that name, and cannot think of the other concerns.

5750

Q. 28. From your investigation will you state when the general public thinks those definitions were written and that spelling fixed? A. Most of them haven't any idea. Those that have think it was from fifty to one hundred years ago. Noah Webster's time, a good many of them say.

5751

MR. CARROLL: That is all.

MR. HALE: This entire deposition is objected to upon all the grounds of the objections reserved, and as incompetent, hearsay, collected for the purpose of this suit after issue was made, and motion is made to strike it out. Without waiving said objection or motion, complainant will cross examine.

5752

CROSS EXAMINATION by Mr. Hale:

x Q. 29. You say your business is that of a theatrical manager? A. Yes.

x Q. 30. How long have you been a theatrical manager? A. Thirty-five years.

x Q. 31. By whom were you selected and employed to make this investigation? A. Syndicate Publishing Company.

x Q. 32. What person in their employ? A. Mr. Adair.

x Q. 33. Is he the only one with whom you held any communication before starting to make this investigation? A. No.

x Q. 34. With whom else did you have communications? A. Mr. Swift, A. L. Swift.

x Q. 35. Also of the Syndicate Publishing Company? A. Yes.

5754

x Q. 36. Any one else? A. No.

x Q. 37. And you discussed with these gentlemen the nature of the investigation you were to make and what you were to do? A. I did not discuss it with them; they instructed me as to what I was to do.

x Q. 38. When was this investigation made? A. I think it was June 1st.

x Q. 39. It covered then approximately the period from June 1st, 1912, to June 10th, 1912; is that correct? A. That is correct.

5755

x Q. 40. Did you take down verbatim the answers made to the several questions which you have stated you asked these people? A. I did, sir.

x Q. 41. Have you preserved that written record of their answers? A. I have.

x Q. 42. Did you ask any questions of these people other than the six questions enumerated? A. No, sir.

x Q. 43. Did you have any general conversation whatever with these people at the time of interviewing them? A. Previous to interviewing them?

5756

x Q. 44. Previous or at the time? A. No, sir.

x Q. 45. Nothing whatever occurred then except you read them the questions and took down their answers? A. No, that is not strictly so. This is

5757

William M. Gray—Cross.

what I read them: I would approach a man and say, "Excuse me, sir," as he was purchasing a dictionary, "I have been authorized to get a little data upon the public conception of the meaning of the word 'Webster.' Will you oblige me by answering these questions?"

x Q. 46. That was all you said in any instance?

A. That was all I said; yes, sir.

5758

x Q. 47. In any instance? A. Yes.

x Q. 48. And then you took down the answers they made in cases where they made an answer?

A. Yes.

x Q. 49. Did you discover any person who had never heard of Webster's dictionary? A. No, sir.

x Q. 50. Did any of these persons volunteer any remarks that were not strict answers to the questions and which you did not take down? A. No, sir.

5759

x Q. 51. You did not ask any of these people who were about to buy what you have termed a Websterian dictionary what their opinion of Webster's dictionary as an authority was? A. I don't understand that question.

x Q. 52. (Question repeated) You did not ask any of these people who were about to buy what you have termed a Websterian dictionary what their opinion of Webster's dictionary as an authority was? A. I did not ask any questions, except the questions that were given me which I have just read to you.

5760

x Q. 53. And did any of these people in any connection intimate to you their estimation of Webster's dictionary? A. I think they did after my questions, yes.

x Q. 54. What did they say in that connection? A. They said they thought it was a good dictionary.

William M. Gray—Cross.

5761

x Q. 55. Anything else? A. Not that I recall.

x Q. 56. Did any of them say anything about the price at which the papers were offering the dictionary? A. I don't recall now, sir, whether they did or not. They might have, and might not have.

x Q. 57. Do you recall any of them saying in substance or effect that a Webster's dictionary at the price asked by the newspaper was a bargain or was cheap or anything to that effect? A. No, I don't recall.

5762

x Q. 58. Did any of these people say anything about having known Webster's dictionary for a long period of time? A. I don't remember that.

x Q. 59. Well, can you say that they did or they did not? A. No, I could not say that either.

x Q. 60. Did any of them allude to having known Webster's dictionary in their school days? A. I think they did, yes, sir; some of them.

x Q. 61. You have stated that in your opinion the general public do not know the publisher of Webster's dictionary; is that correct? A. The general public do not know nor care.

5763

x Q. 62. Do you mean to say that they have no name of a publisher at all in mind or merely that they do not know the accurate and true name of the publisher? A. I don't think they have any idea whatever, sir, as to the publisher's name.

x Q. 63. But in a few instances you discovered that they would hazard the mention of a name which as often as not was incorrect? A. I did not say that.

5764

x Q. 64. Well, what is the fact? A. They mentioned some names of publishers of dictionaries.

x Q. 65. Sometimes did they mention the name of the paper that was distributing the dictionary? A. Yes, sir, in one or two instances.

5765

William M. Gray—Cross.

x Q. 66. And sometimes did they mention names that you never heard of in connection with dictionaries' publishers? A. One instance, the name I was trying to find. Ivison, Blakeman, Taylor & Company.

5766

x Q. 67. You do not know, do you, that the old firm of Ivison, Blakeman, Taylor & Company has been merged into and become part of the American Book Company? A. I don't know anything about it.

x Q. 68. Can you think of anything else that any of these people interviewed by you said in a general way about Webster's dictionary? A. No, I did not pay any attention to anything that was said after the questions had been put and answered.

5767

x Q. 69. Your business was simply to obtain answers to the specific questions? A. The specific questions, yes, sir.

x Q. 70. I presume none of these answers were made under oath? A. No.

x Q. 71. You have stated that in your opinion the general public do not care anything about the publisher. Just exactly what do you mean by that answer? A. The portion of the general public which I came in contract with during my trip were after dictionaries, and their attitude indicated to me that they simply wanted a Webster's dictionary, a Websterian dictionary.

5768

x Q. 72. They were more concerned in getting the book which they wanted than in the name of the concern who published that book? A. Yes, sir, that is my opinion.

x Q. 73. And that is what you meant by that answer? A. Yes.

x Q. 74. In reply to your question No. 2 as to

William M. Gray—Cross.

5769

whether the name "Webster" indicates a dictionary gotten out by any particular publisher or at any particular place, did you obtain any affirmative answers? A. Yes.

x Q. 75. How many? A. Very few. In Pittsburgh I had at least six affirmative answers, that is, the answer was, "Yes;" and in Cincinnati, eight. That is all.

x Q. 76. Did any of the answers indicate that the name "Webster" did mean to them a book gotten out by a particular publisher but one whose name the person did not know?

5770

MR. CARROLL: I object to this line of questions, unless the counsel will put in evidence the particular cards that he has in mind.

A. I don't know what that answer would indicate in that question.

x Q. 77. I show you one of your cards, bearing the name of H. Bentley of Pittsburgh. He answered your question No. 1 with the word "No;" he answered your question No. 2, which relates to whether the name "Webster" indicates any particular publisher as follows: "Yes, by some particular person or persons." Do you recall that instance? A. He undoubtedly answered that way; that is my writing.

5771

x Q. 78. And you did not pursue the inquiry further. A. I did not, sir.

5772

x Q. 79. Did any of the people questioned by you indicate by their answers that the name "Webster" on a dictionary did suggest a dictionary gotten out by a particular publisher? A. Yes, sir.

x Q. 80. How many of them, if you know? A.

5773

William M. Gray—Cross.

I should say about a dozen in the two hundred and ninety-eight names.

x Q. 81. And did some of them indicate that the name "Webster" indicated to them a particular publisher but were unable to give the name of that publisher? A. I think there was one or two who said they had forgotten the publisher's name. It is on those cards.

5774

x Q. 82. Did any of the persons questioned say that they knew anything about rewritings of Webster's dictionary? A. Succeeding rewritings?

x Q. 83. Anything about rewritings or succeeding editions? A. I think that to that particular question, which is No. 4, the answers were almost invariably "No."

x Q. 84. There were, however, exceptions? A. Possibly one or two. I cannot recall without looking at the cards.

5775

x Q. 85. Did any of them, for example, answer substantially that they knew of rewritings, but did not know who the publishers were? A. I think there was one or two who answered that way; my impression is that there was.

x Q. 86. In answer to question 5 as to who wrote the definitions and fixed the spellings, I presume the great majority answered "Webster, either Noah or Daniel?" A. Yes, sir.

5776

x Q. 87. Did any of them indicate that Webster did so originally? A. Yes, sir.

x Q. 88. Leaving room for the inference that it had been corrected or added to since that time? A. Yes.

x Q. 89. How many such instances? Have you tabulated them? A. I have not.

x Q. 90. There were a considerable number of

William M. Gray—Cross.

5777

such instances? A. Several, I could not tell you. There were quite a number. I can refresh my memory here from the memorandums on hand.

x Q. 91. Refresh your memory to any extent you want. In other words, quite a few used the words "Webster originally," or words to that effect? A. Yes. "Webster and other great men; Committee of men; any number of people; without Webster"—all this I am quoting. "Various people; competent men; Merriams; and Hiene Young."

5778

x Q. 92. Is that all the list you have? Go on, give all you have.

MR. CARROLL: I object again to this line of examination, unless counsel for defendant will put in all of the cards.

MR. HALE: The witness at present is testifying from his own memoranda made from the cards. I can see no objection to the question. Will you please continue with your summary of the answers to that question.

5779

MR. CARROLL: The cards themselves are the best evidence of what is on them, rather than the witness' memorandum.

MR. HALE: The question did not call for the contents of the cards, but for the answers made. The witness can refresh his recollection from anything he chooses.

5780

x Q. 93. Please go on with the form of answers made to that? A. I have not any more that I can recall.

MR. CARROLL: I object generally to this whole line of examination, unless counsel

5781

William M. Gray—Cross.

for complainant will put in the cards himself, inasmuch as they are the best evidence, and inasmuch as counsel for complainant has them in his hands.

5782

MR. HALE: The cards are not the best evidence, being a mere memoranda made by the witness from which he may refresh his memory, and then testify directly to the answers made to him; they are not evidence in any sense.

5783

x Q. 94. Do you recollect any answers in the following forms or substantially to that effect: "Webster at first and some additions and corrections later on;" "All contemporaneous authorities;" "Originally Noah Webster;" "Originally Webster." Do you recollect answers in those forms? A. If they are on those cards, they are correct.

x Q. 95. Do you recollect answers in those forms? A. No, I don't recall the answers.

x Q. 96. I show you a few cards taken from one of your Pittsburgh envelopes?

MR. CARROLL: Again I object to this line of examination unless counsel for complainant will offer all the cards.

5784

MR. HALE: Defendant's counsel may offer them if he deems that they are relevant and material.

MR. CARROLL: Defendant's counsel did not offer them, but inasmuch as complainant's counsel has gone into the matter and picked out particular cards, he objects to complainant's line of examination, unless he will show all the cards.

William M. Gray—Cross.

5785

x Q. 97. Will you answer the question, please?

A. Those answers on those cards you have given me are correct.

x Q. 98. So some of the people interviewed did answer in that manner? A. Yes.

x Q. 99. How many of them answered in that manner? A. The five that you showed me.

x Q. 100. Any others? A. I don't remember of any.

5786

x Q. 101. Did any of the persons questioned answer your question 1 by saying that Webster was the publisher of the Webster's dictionary?

MR. CARROLL: Same objection.

A. I think they did.

x Q. 102. How many answered that way? A. I could not say without looking at those cards.

x Q. 103. Any considerable number? A. I don't recall.

5787

x Q. 104. Did any of them answer question 1 which asks "Do you know who is the publisher of Webster's dictionaries" simply by saying, "Yes," and without indicating who they believed to be the publisher? A. I think some did.

x Q. 105. In your tabulations or summaries, how did you include that class of answer? A. My tabulations or summaries—what do you mean by that? My cards?

5788

x Q. 106. In answer to Mr. Carroll you gave a general statement of the results of your inquiries with reference to each one of these questions. How did you deal with that class of answers?

MR. CARROLL: Reference to the earlier part of the examination will show that the

5789

William M. Gray—Cross.

witness testified that the great majority of the general public did not know the name or names of any publishers of Webster's dictionaries.

A. I do not find on these memorandums that I have here any answers of "Yes" to question No. 1.

5790 x Q. 107. Look at that one, for example, and refresh your memory! (Handing witness card) A. Yes, sir, that is correct. My memorandum is not complete here.

x Q. 108. Some did answer question 1 merely by the word "Yes" and afforded no other information? A. I see that one did.

x Q. 109. Do you know whether or not there are any others? A. No, sir, I don't, without referring to the cards.

5791 x Q. 110. How many did you say named the Merriams? A. I don't think I said.

x Q. 111. Well, how many did name the Merriams? A. I could not answer that accurately without going over the cards completely.

x Q. 112. Quite a few answered "Merriams," however? A. I remember of two or three; I am not sure that there are more than that.

5792 x Q. 113. Did any of these people whom you questioned indicate that the name "Webster" on a dictionary would have an influence with them? A. Is that one of the questions that I asked them, you mean?

x Q. 114. I am searching your recollection, and I want to know if any person answered any of your questions in a manner including the statement that the name "Webster" would have influence with them? A. I cannot recall any such remark.

x Q. 115. In answer to your question 2, which relates to whether the name "Webster" indicates a dictionary of a particular publisher, did any one or more say in substance, the name would influence a person; and I show you one of your cards to refresh your recollection (handing witness card)?

A. Yes, sir, L. E. Woessner, 50 Loan & Trust Building, Milwaukee, did.

x Q. 116. Did any of them indicate that Webster was a standard in answer to any of your questions? A. I don't recall that.

5794

x Q. 117. I show you one of your cards to refresh your recollection and ask you to now answer the last question? (Handing witness card) A. Yes, sir, J. Heffernan, 305½ 26th avenue, Milwaukee, answered, "We know Webster is standard" to question No. 2.

x Q. 118. Did any of the persons questioned indicate by their answers to any of your questions that they knew that Webster's dictionary had been revised or changed from time to time by the work of new editors or by editorial staffs? A. Indicate by their answers?

5795

x Q. 119. Yes. A. I did not pay much attention to what their answers indicated.

x Q. 120. Look at this answer to No. 5, and here is another answer to No. 5 (handing witness cards)? A. J. C. Crawford, in answer to question No. 5, said "Noah Webster and staff, and new editions since his time."

5796

x Q. 121. New editors? Just look at it. Isn't that the plural? I don't care how you put it, but just be sure? A. It looks to me like "new editions."

x Q. 122. We will take your word for it. It is your own handwriting? A. H. Hollander, 624

William M. Gray—Cross.

5797

Farwell avenue, Milwaukee, in answer to question No. 5, said, "Noah Webster; after that edited by others."

x Q. 123. I believe you have testified that some of them answered your question No. 2 by merely saying "yes" and without indicating the particular publisher? A. Yes, sir, that is correct.

5798

x Q. 124. In such instances, did you pursue the inquiry and ask them what publisher they had in mind? A. I did not, sir; I was not instructed to do that.

5799

MR. CARROLL: Counsel for the defendant states at this point that it was impossible to foresee what answers would be made to the questions, and it was therefore equally impossible to instruct the investigators what additional questions should be or might be asked in the event of innumerable possible answers.

x Q. 125. Did any of them indicate that the Merriams used to be the publishers of Webster's dictionary? A. I think one man did.

x Q. 126. Did any answer your question No. 4 as to the succeeding rewritings and revisions simply by the word "Yes?" A. I don't recall any such.

5800

x Q. 127. (Counsel hands witness card). Refresh your recollection, please, and answer the question? A. Yes, a policeman, Station No. 1, Milwaukee, who would not give his name, and refused to show his badge, said "Yes" to question No. 4.

x Q. 128. Do you know whether there are any other such instances in this package of cards, only some of which have been shown to you? A.

William M. Gray—Cross.

5801

You mean where question No. 4 has been answered in the affirmative?

x Q. 129. Yes. A. I don't recall.

x Q. 130. Will you please read the answer made to the 6th question by Lyman G. Wheeler, a lawyer of Milwaukee?

MR. CARROLL: I object to this question again as being an unfair selection of a unique and exceptional card, picked out particularly by counsel for complainant, and insist upon this objection, unless counsel for complainant will also show this witness all the other cards which counsel for complainant holds in his hand, and ask him to refresh his memory from them, so that the whole result of the investigation may appear before the Court.

5802

MR. HALE: Question withdrawn.

x Q. 131. Did any of the persons questioned by you answer your question 1 substantially to the following effect: "G. & C. Merriam used to be?" A. Yes.

5803

x Q. 132. Did any of the persons interviewed by you answer question No. 2 substantially as follows: "It had until recently. I suppose it was all one concern?" A. Yes.

x Q. 133. Did any of these persons answer your question 4 as to succeeding rewritings substantially as follows or to like effect: "I know Webster's Unabridged was followed by Webster's International. I think by same publisher?" A. Yes, Lyman G. Wheeler, of Milwaukee.

5804

x Q. 134. You refer to the individual card handed you and did not run through your entire bunch of cards in making your last answer? A. Yes, sir.

5805

William M. Gray—Cross.

x Q. 135. Did this same gentleman answer question 5 by saying he did not know, and question 6 by saying that the definitions were written and the spelling fixed, "at no one period?" A. To question 5 he answered "I don't know," and to question 6 he answered "at no one period."

5806

x Q. 136. Please mention the name of any other person questioned by you who answered question 1, "No," indicating that the person did not know who was the publisher of Webster's dictionary, and who answered question 2 "Yes," indicating that the name "Webster" indicated to such person a dictionary gotten out by a particular publisher? A. Mrs. Annette Schrand, 718 Cedar Street, Milwaukee, answered to question No. 1, "No, I do not;" and to question No. 2, "Yes."

5807

x Q. 137. Did any of them indicate that the Merriams wrote the definitions and so forth in answer to question No. 5? A. I don't remember that.

(Counsel hands witness card.)

A. Yes, Joseph Kirkeep, 4119 Floral Avenue, Norwood, Cincinnati, did.

x Q. 138. That gentleman was one of those that gave the name of "Merriam" in answer to question 1 as the name of the publisher, was he not?

A. Yes.

5808

x Q. 139. Will you please state the answers that Isidore Wise of Cincinnati gave to your six questions?

MR. CARROLL: Same objection.

A. "Question 1, Merriam; No. 2, It does to me; it means gotten out by that publisher; 3, No, I

William M. Gray—Cross.

5809

don't know of any other city excepting Connecticut; No. 4, No, I don't; No. 5, Successive Board of Editors since the time of Noah Webster. No. 6, Fixed in each new edition."

MR. CARROLL: Objection to this exceptional and unique selection by complainant's counsel is renewed.

x Q. 140. Did any of these persons answer any of your questions to the effect that they knew of the book or series, but did not know the publisher? 5810

(Handing witness card.)

A. In answer to question 4, Lawrence Bennett, 631 West 6th Street, Cincinnati, said, "I know of one, but don't know the publisher."

x Q. 141. How many of all the people interviewed answered your question 2 in the affirmative? A. I don't know. 5811

x Q. 142. You, however, have the means of finding out? A. Yes, sir.

x Q. 143. A number did answer it affirmatively, however?

MR. CARROLL: Objected to inasmuch as his witness has already testified that a few did, and that he could not tell the exact number without making a complete count from the cards. 5812

MR. HALE: It is impossible for complainant's counsel to tabulate the witness' results along these lines, and he must therefore leave it to the witness to answer as he sees fit.

5813

William M. Gray—Cross.

x Q. 144. (Question repeated.) A number did answer it affirmatively, however? A. I think a few did; yes, sir.

x Q. 145. Did you take down and preserve a memorandum of every answer given you by every person questioned? A. I did.

x Q. 146. That is of all who consented to answer the questions at all? A. Yes, sir.

5814

MR. HALE: That is all.

RE-DIRECT EXAMINATION by Mr. Carroll:

x Q. 147. When did you take down the memorandum which has just been mentioned by counsel for complainant; immediately after the questions were asked? A. As each question was asked and answered the answer was written down on the card.

5815

x Q. 148. Are these the cards which counsel for complainant has been showing you during his cross examination from time to time? A. Yes, sir, some of them.

x Q. 149. Have you all of those cards with you? A. Yes, sir.

x Q. 150. Are these those cards (showing witness cards)? A. Yes, sir.

x Q. 151. Are those cards in your handwriting? A. Yes, sir.

5816

x Q. 152. By reference to them, can you refresh your memory and state exactly what each one of these persons examined by you answered to the various questions? A. Yes, sir.

x Q. 153. Will you refer to those cards and read into the record the answers of each one examined by you?

William M. Gray—Re-Direct.

5817

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as relating to a transaction between this witness and third persons not in any way binding upon the complainant, as mere hearsay obtained for the purpose of this suit, and obtained from persons who are not produced as witnesses and sworn and subjected to cross examination.

5818

MR. CARROLL: Inasmuch as counsel for complainant has selected at random from these cards certain exceptional and unique ones and used them as a means of refreshing this witness' recollection, it is necessary in order that the Court may have a clear and fair understanding of the result of this examination that all the cards be put in evidence, and they are therefore offered by defendant. They are offered in the manner above set forth; that is to say, the witness is directed to refresh his memory by means of these cards, and to read into the record the answers made by each one of the persons examined.

5819

A.

The copies of the cards produced by the witness Gray are marked in evidence—"Defendants' Exhibit Cards produced by witness Gray, J. A. S. Exr., June 13, 1912."

5820

The text of said cards is printed at this point by consent and is as follows:

5821 *Exhibit: Cards produced by witness Gray.*

The persons, their addresses, occupations and the answers which each gave to the questions are as follows:

PITTSBURG, PA.

1. I. C. Donovan, 7046 Reynold Street, East End.

- Question 1. No.
Question 2. No.
Question 3. No.
Question 4. No.
Question 5. Webster.
Question 6. Not recently.

5822

2. A. A. Johnson, 605 Phila. Bldg., Clerk.

- Question 1. No.
Question 2. No.
Question 3. No.
Question 4. No.
Question 5. Noah Webster.
Question 6. 50 or 60 years.

5823

3. F. W. McLean, 2384 California Avenue, Mufr.

- Question 1. Not now.
Question 2. No.
Question 3. No.
Question 4. No.
Question 5. Daniel Webster.
Question 6. 75 years.

5824

4. W. L. Lindsley, 1121 Milton Avenue, Swissvale, Pa., Salesman.

- Question 1. No.
Question 2. No.
Question 3. New York.
Question 4. No.
Question 5. Noah Webster.
Question 6. 1865 or thereabouts.

Exhibit: Cards produced by witness Gray. 5825

5. L. C. Esderlin, 2553, Penn. Avenue, Mining Engineer.

- Question 1. No.
- Question 2. No.
- Question 3. New York.
- Question 4. No.
- Question 5. Webster.
- Question 6. Years ago.

6. Amoris A. Prohle, Homestead, Stationary Engineer. 5826

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. About 50 years ago.

7. Wilbert Pierce, Protestant Orphan Asylum, Messenger. 5827

- Question 1. No.
- Question 2. No.
- Question 3. Yes, New York & Chicago.
- Question 4. No.
- Question 5. Webster.
- Question 6. Hard to tell.

8. B. A. Herrod, 406 Brushton Avenue, Bank Clerk.

5828

- Question 1. No, I do not.
- Question 2. Noah Webster.
- Question 3. No.
- Question 4. No, I don't.
- Question 6. I haven't any idea.

5829 *Exhibit: Cards produced by witness Gray.*

9. John A. Hartman, 3138 Allendale Street,
Printer.

Question 1. No, I do not.

Question 2. No, sir.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Don't know.

5830 10. Chester Wilson, 312 Loreny Avenue, Re-
porter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I presume by Noah Webster.

Question 6. I don't know.

5831 11. George Matta, 817 Hazel St., Motorman.

Question 1. No.

Question 2. No.

Question 3. No, I don't know.

Question 4. I don't know.

Question 5. Webster.

Question 6. I don't know.

12. Miss L. Claney, 250 5th St.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Don't know.

5832

Exhibit: Cards produced by witness Gray. 5833

13. Jesse Anderson, 1409 Sheffield St., Teacher.

Question 1. No.

Question 2. No.

Question 3. No, I do not.

Question 4. No.

Question 5. Noah Webster.

Question 6. I don't know.

14. J. F. Gray, 517 Wheeler, Salesman.

5834

Question 1. No.

Question 2. No particular publisher or place.

Question 3. No.

Question 4. No.

Question 5. Don't know anybody in particular.

Question 6. Don't know that.

15. Mrs. R. Fiebler, 1403 Locust St., McKeesport.

5835

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Couldn't say.

16. A. W. Hanmul, Unity, Plumber.

Question 1. No.

5836

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

5837 *Exhibit: Cards produced by witness Gray.*

17. Mary E. Hoover, 263 40th St.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Don't know.

5838 18. Charles Colombel, 504 So. Lauze Ave., Mechanical Draftsman.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. No, I don't know.
- Question 6. I don't know.

19. Miss K. Williams, 1330 Beachview, Stenographer.

5839

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

20. C. E. Lee, 319 Barnes St., Wilkensbury, Contractor and Builder.

5840

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

Exhibit: Cards produced by witness Gray. 5841

21. L. B. Hunst, 1262 Finck Avenue, Attorney.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I couldn't tell you that.

Question 6. I don't know.

22. J. F. Murphy, 2418 Butts St., Laborer.

5842

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Dispatch Publishing Co.

Question 6. This year.

23. E. H. Wilson, 37 Grace St., Stenographer.

Question 1. No.

Question 2. Yes.

5843

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

24. Mrs. J. G. Adams, 6922 Hamilton Ave.

Question 1. No.

Question 2. No, indeed.

Question 3. New York.

Question 4. No.

Question 5. All contemporaneous authorities.

5844

Question 6. Most any time.

25. C. P. Gottson, Perrysville Ave., Insurance.

Question 1. No.

Question 2. No.

5845 *Exhibit: Cards produced by witness Gray.*

Question 3. No.

Question 4. I know of a rewriting, but don't know who the publisher was.

Question 5. I suppose Daniel Webster was the original.

Question 6. I don't know; it has been a long time.

5846 26. Harris Wilson, 441 Neville St., Johnstown, Clerk.

Question 1. No, I don't.

Question 2. Yes, I think so.

Question 3. No.

Question 4. I do not.

Question 5. Webster at first and some additions and corrections later on.

5847 Question 6. In recent years.

27. S. B. Brookhart, Bellvue, Pa., Salesman.

Question 1. No.

Question 2. No.

Question 3. No, not distinctly.

Question 4. Do not.

Question 5. Original, Noah Webster.

Question 6. More than 100 years ago.

5848 28. R. K. Fleming, 315 So. Highland Ave., Physician.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Originally Webster.

Question 6. When dictionary was written.

Exhibit: Cards produced by witness Gray. 5849

29. M. M. Mecklen, Rochester, Pa.

Question 1. No.

Question 2. No, only that Noah Webster wrote the first.

Question 3. No.

Question 4. No.

Question 5. Webster fixed the spelling.

Question 6. Way back before I was born.

30. Paul Terhune, Commercial, Pa., Salomon. 5850

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Late years.

31. H. Bentley, 5910 Alder St., Mgr. Rosenbaum & Co., Dry Goods. 5851

Question 1. No.

Question 2. Yes, by some particular person or persons.

Question 3. Don't know.

Question 4. No.

Question 5. It may have been Webster.

Question 6. Some years ago.

32. Barnett Spiro, 16 Leffie Street, Office boy, Rosenbaums. 5852

Question 1. Merriam & Co. I believe.

Question 2. I don't know how to answer that.

Question 3. No. Aside from Merriam & Co.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5853 *Exhibit: Cards produced by witness Gray.*

33. R. C. Richardson, 1410 Beaver Avenue,
Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster himself.

Question 6. Don't know. (Ten years).

5854 34. Paul Cramer, 200 N. Diterage Street, at
school.

Question 1. No.

Question 2. No. It doesn't.

Question 3. New York.

Question 4. No.

Question 5. Noah Webster.

Question 6. Civil War time.

5855 35. Geo. Stewart, 4211 Metgate Street, Harness
Maker.

Question 1. No.

Question 2. No.

Question 3. I do not.

Question 4. No, sir.

Question 5. Webster.

Question 6. Boyhood days.

36. Edwin Latchen, Wilson, Pa., Cashier.

5856

Question 1. No, I don't know.

Question 2. I understand Webster was the
first.

Question 3. No, I never thought of it.

Question 4. No.

Question 5. I don't know.

Question 6. " "

Exhibit: Cards produced by witness Gray. 5857

37. Howard Chantham, 308 Homer Street, Office Boy.

- Question 1. No, sir.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Don't know.

38. W. S. Kearney, 1412 Manor Avenue, Mc-Keesport, Banker, 5858

- Question 1. No, I don't.
- Question 2. No.
- Question 3. No.
- Question 4. No, I don't.
- Question 5. I never gave that any thought.
- Question 6. I haven't slightest idea.

39. Mrs. L. W. Donahue, 279 Bradock Avenue, Turtle Creek, 5859

- Question 1. I do not.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I can't answer that.
- Question 6. I don't know.

40. C. Bartolde, 27 School Street, Waiter.

- Question 1. No. 5860
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Don't know.

5861 *Exhibit: Cards produced by witness Gray.*

41. Richard Noll, 706 Fourth Street, News Dealer.

- Question 1. No.
- Question 2. No, it don't.
- Question 3. No. I don't.
- Question 4. No.
- Question 5. I don't know.
- Question 6. Don't know.

5862

42. R. Gabig, 47 Ulysses St., Mt. Washington.

- Question 1. No, sir.
- Question 2. I don't know.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

43. Chas. Santer, 3124 Shadeland Ave., Clerk.

5863

- Question 1. No. I couldn't tell you.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

44. E. Lysle, Jemette, Pa., Boilermaker.

5864

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Don't know.

45. Noy; would not give name.

- Question 1. No, sir.
- Question 2. No.

Exhibit: Cards produced by witness Gray. 5865

- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. Don't know.

46. Chas. Bahle, 1539 Hatchey St.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No. 5866
- Question 5. Don't know.
- Question 6. Don't know.

47. Miss Lilly Zimmerman, 1515 Boyle St.,
Stenographer.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know. 5867
- Question 6. I don't know.

48. E. E. Crumrine, Washington, Lawyer.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Don't know.
- Question 6. No one knows anything about
it at this time. 5868

49. A. Roth, 2156 Center Ave., Barber.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. Dam if I know.

5869

Exhibit: Cards produced by witness Gray.

Question 5. Don't know.

Question 6. Don't know.

50. Mrs. Wm. Benecke, 308 West St., Wilkensburg.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5870

Question 5. I don't know.

Question 6. I don't know.

51. C. W. Peters, 1421 East Street.

Question 1. Webster.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5: Don't know.

Question 6. Don't know.

5871

52. Thos. Thorne, 414 Independ Street, W. E., Janitor.

Question 1. No.

Question 2. No.

Question 3. England.

Question 4. No. I do not.

Question 5. I don't know.

Question 6. I don't know.

5872

53. A. Smith, 16 Charles St., Clerk.

Question 1. No.

Question 2. No. No particular pub.

Question 3. New York.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

Exhibit: Cards produced by witness Gray. 5873

54. Francis E. Goff, 91 Belveden Street, Crafton.

- Question 1. Webster.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. I don't know.

55. Russel Brankley, 5334 Wickleff, Clerk.

5874

- Question 1. No, I don't.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. I don't know that.

56. Mrs. Mary Grine, 305 37th Street, City.

5875

- Question 1. Yes.
- Question 2. No.
- Question 3. No, I do not.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

57. O. C. Small, Windy Ghout, Bever, Pa., Messenger.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. Yes, Syndicate Pub. Co.
- Question 5. Webster, I guess.
- Question 6. I don't know.

5876

58. J. C. Biley, 730 Eliver Building, Atty.

- Question 1. No.

5877 *Exhibit: Cards produced by witness Gray.*

Question 2. No, it does not.

Question 3. No.

Question 4. No.

Question 5. Noah Webster, originator.

Question 6. I don't know.

59. J. H. Fisher, 6th Floor, Union Bank Building, Salesman.

5878

Question 1. No, sir, I do not.

Question 2. No, it simply indicates that.

Question 3. No, I do not.

Question 4. No.

Question 5. Noah Webster assisted by others.

Question 6. That I don't know.

60. Mary Hall, 1414 Fifth Avenue.

5879

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Don't know.

61. O. C. Coho, 111 E. Pittsburgh Street, Greensburg, Engineer, Pa. R. R.

5880

Question 1. No, I do not.

Question 2. No, it don't.

Question 3. I do not.

Question 4. No.

Question 5. Noah Webster.

Question 6. I couldn't give that.

62. W. S. Reed, 309 So. Craig Street, Electrician.

Question 1. No, I do not.

Exhibit: Cards produced by witness Gray.

5881

Question 2. No, I can't say it does.

Question 3. I do not.

Question 4. No.

Question 5. Noah Webster.

Question 6. I don't know.

63. Wm. Redling, 320 N. Graham Street, East
End, Cigars.

Question 1. I don't.

Question 2. There's more than one pub-
lisher.

5882

Question 3. No.

Question 4. No, sir.

Question 5. I guess it was Webster.

Question 6. Some time ago.

64. Joseph Beekman, 5137 Butler Street., Jani-
tor in Bank.

Question 1. The "Dispatch," I suppose.

5883

Question 2. The "Dispatch."

Question 3. No, I don't know.

Question 4. No.

Question 5. Webster.

Question 6. Hard question to answer, I
don't know.

65. Miss Alice Fouks, 1528 Rockland Avenue,
Tel. Operator.

Question 1. No, I don't.

5884

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I couldn't say.

5885 *Exhibit: Cards produced by witness Gray.*

66. A. M. Colven, 5754 Howe Street.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know anything about those things.

Question 6. I don't know.

5886

67. Miss Jutte, 5204 Liberty Avenue, East End.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5887

68. S. A. Xippas, 406 Burger Bldg., Interpreter,
U. S. Immigration Service.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

69. Louis Wall, 314 Sycamore Street, Bartender.

5888

Question 1. No, I don't know.

Question 2. No.

Question 3. I don't know that.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

Exhibit: Cards produced by witness Gray. 5889

70. W. M. Dickson, Cannonsburg, Messenger Agent.

Question 1. No.

Question 2. No, sir.

Question 3. No.

Question 4. No.

Question 5. I don't believe I know.

Question 6. Don't know.

71. Mrs. R. A. Loeffler, 1006 Chestnut Street.

5890

Question 1. No, I do not.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Daniel Webster.

Question 6. Many years ago.

72. J. Milvahill, 2851 Bedford Avenue, Messenger at Hospital.

5891

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

73. T. S. Walton, 142 Carson Street, Milkman.

Question 1. No.

Question 2. No.

5892

Question 3. No, I don't.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5893 *Exhibit: Cards produced by witness Gray.*

74. Theodore Braun, 2038 Mountford Avenue.
Laborer.

- Question 1. No, I don't.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

5894 75. Walter Fredrick, 10 Filbert Street, Messenger.

- Question 1. No.
- Question 2. No.
- Question 3. No, sir, I do not.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

5895 76. J. R. Ormond, Washington, Pa., Oil Business.

- Question 1. I couldn't tell you.
- Question 2. No, sir.
- Question 3. No.
- Question 4. No.
- Question 5. Webster, who compiled from other dictionaries.
- Question 6. Pretty hard to say.

5896 77. G. Roff, 843 Kirkpatrick Avenue, Stenographer.

- Question 1. No. I do not know.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. 1840.

Exhibit: Cards produced by witness Gray. 5897

78. Mrs. M. Blakeny, 52 Salvania Street, Ste-nographer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. Years and years ago.

79. Leon Shapiro, Finleyville, Pa., Farmer. 5898

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster is all I ever heard.

Question 6. I don't know.

80. W. P. Gosseon, 3944 Hawley Avenue, En-gineer. 5899

Question 1. Indeed I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

81. James Timponce, 3 Poplar Alley, Baggage-man.

Question 1. No, I don't know. 5900

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. It was Noah Webster.

Question 6. Don't know.

5901 *Exhibit: Cards produced by witness Gray.*

82. W. D. Slease, 3119 Kelvin Street, Minister.

Question 1. Yes.

Question 2. Yes, it does.

Question 3. In Boston I think.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5902 83. Geo. L. Golddoch, Allentown, Pa., Milkman.

Question 1. No, I do not.

Question 2. Yes, it does.

Question 3. New York, I think.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

84. Mrs. Alexander, 5854 Aylshoro Avenue.

5903 Question 1. No.

Question 2. Yes.

Question 3. No, I don't.

Question 4. No, Post I think.

Question 5. I don't know.

Question 6. I don't know.

85. J. L. Schwutz, Ft. Worth, Texas, Oil and Gas Operator.

Question 1. No.

Question 2. No.

5904 Question 3. No.

Question 4. I've forgotten.

Question 5. Webster.

Question 6. Many years ago.

Exhibit: Cards produced by witness Group.

5995

CINCINNATI, OHIO.

96. Geo. Blüchner, 1929 Carson Street, School.

Question 1. I do not. Whether I suppose.

Question 2. No.

Question 3. No.

Question 4. I heard there was a second publication.

Question 5. Whether.

5996

Question 6. Good many years ago.

97. R. O'Neill, 4385 Virginia Avenue, Solicitor.

Question 1. Whether, I guess.

Question 2. Yes.

Question 3. No.

Question 4. No.

Question 5. Whether.

Question 6. Before my time.

5997

98. Miss Brandewie, 2345 Gilbert Ave., School.

Question 1. Never looked.

Question 2. Boston.

Question 3. No.

Question 4. No.

Question 5. Whether—Saw words by them
scanned them.

Question 6. Middle of 19th century.

99. Ellen Clark, 1518 Chapel Street.

5998

Question 1. No, I don't.

Question 2. No.

Question 3. Don't know.

Question 4. No.

Question 5. Whether.

Question 6. Good many years ago.

5909 *Exhibit: Cards produced by witness Gray.*

90. John Shippering, 26 E. 13th Street, Covington, Engineer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. When he wrote the book.

5910

91. H. W. Steinman, Westwood, Mfgr.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No, I guess not.

Question 5. Webster.

Question 6. Some time ago.

92. Hilda Pond, 3000 Hackbury, Stenographer.

5911

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. 50 years ago.

93. A. J. Bernens, 3919 Elsmere Ave., Book-keeper.

5912

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. 1st part of 19th Century.

Exhibit: Cards produced by witness Gray. 5913

94. S. J. Owens, 409 Milton St., Clerk.

Question 1. No.

Question 2. No.

Question 3. New York; not positive.

Question 4. No.

Question 5. Noah Webster.

Question 6. About 1840.

95. Joe W. Kehnan, 1171 Hamond Ave., Driver. 5914

Question 1. No.

Question 2. No.

Question 3. Cincinnati.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

96. Raymond Rigney, 756 W. 9th, Clerk R. G. Dunn.

Question 1. No.

5915

Question 2. No, sir.

Question 3. Cincinnati.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

96½. Miss A. Gorsuch, 4 W. Sommerfield, Avondale, Working Girl.

Question 1. No.

Question 2. No.

5916

Question 3. New York.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

97. V. Ketzler, Sharonville, O., Clerk.

Question 1. No.

5917 *Exhibit: Cards produced by witness Gray.*

- Question 2. No.
- Question 3. Yes.
- Question 4. No.
- Question 5. I don't know that.
- Question 6. I don't know that.

98. D. Moschel, 1213 Poplar, Messenger.

- 5918
- Question 1. No.
 - Question 2. No.
 - Question 3. Yes.
 - Question 4. No.
 - Question 5. I couldn't say.
 - Question 6. I don't know.

99. Claude Henley, 931 Bar St., Elevator Tender.

- 5919
- Question 1. No (Webster himself).
 - Question 2. No, sir.
 - Question 3. No.
 - Question 4. No.
 - Question 5. I don't know.
 - Question 6. I don't know.

100. Miss Held, 3340 Spokane Ave., Walnut Hill.

- 5920
- Question 1. No, I don't.
 - Question 2. No.
 - Question 3. No.
 - Question 4. No.
 - Question 5. I don't know.
 - Question 6. I don't know.

101. Frank Baker, Addyston, Ohio, Engineer.

- Question 1. No.
- Question 2. No.
- Question 3. No.

Exhibit: Cards produced by witness Gray.

5921

Question 4. No.

Question 5. I don't remember just now.

Question 6. I don't know.

102. George Rooney, 543 Dandridge Street,
Representative.

Question 1. No, I don't.

Question 2. No.

Question 3. No, I do not.

5922

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

103. Mrs. M. S. Johnston, Silveton, O.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know

5923

Question 6. I don't know.

104. Hold. Grewe, 4706 Wilmer Street.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

105. J. Keller, 544 Mt. Hope, Clerk.

5924

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

925

Exhibit: Cards produced by witness Gray.

106. Frank Lane, 2230 Gilbert, Civil Engineer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know that, either.

Question 6. I don't know.

5926

107. Mrs. Ed Padgett, Ludlow, Ky.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

108. F. Koepfle, 4321 Dower Avenue, St. Bernard, Cashier.

5927

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

109. Fredericka Godsnee, 230 Garrard Street, Covington, Ky.

5928

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know that.

Question 6. I don't know that.

Exhibit: Cards produced by witness Gray. 5929

110. Edward Downing, 631 West 4th Street,
Car Conductor.

Question 1. No, sir, I don't.

Question 2. I don't know

Question 3. No.

Question 4. No.

Question 5. I don't know that.

Question 6. I don't even know that.

111. Wm. M. Schaeffer, 35 Fifth Avenue, Cov-
ington, Ky. 5930

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know. Before I was
born.

112. J. I. Allen, c/o Car Cartidge & Paper Co.,
Collector. 5931

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. I do not.

Question 5. I don't know.

Question 6. I don't know.

113. Wm. Ziegenhardt, 1053 Washall Avenue, 5932
Engineer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I couldn't tell you.

5933 *Exhibit: Cards produced by witness Gray.*

114. Chas. Pelman, 1003 E. Court Street, Stenographer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know

Question 6. I don't know.

5934 115. A. Gallenkupr, 332 2nd Avenue, Dayton,
Order clerk.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No sir, I do not.

Question 5. I don't know.

Question 6. I don't know.

5935 116. L. Nichoff, 1810 Mills Avenue, Office clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

117. R. E. Gosling, 1510 Lingo, Stenographer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5936

118. C. B. Lewis, 15 Walnut Avenue, Wyoming,
Mach. Furniture Co.

Question 1. I do not.

Exhibit: Cards produced by witness Gray.

593

Question 2. I do not.

Question 3. No sir.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

119. Rose Hempel, 2014 Clarion Avenue, Book-keeper.

Question 1. No.

Question 2. No.

593

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

120. Mr. Frank Zehnder, 118 E. 13th St.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5939

Question 5. I don't know.

Question 6. I don't know.

121. H. H. Friason, 1021 Foraker, Plumber.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5940

122. Geo. Lamning, Mt. Healthy, O., Grocery Mgr.

Question 4. No.

Question 2. No.

Question 3. No, I do not.

5941 *Exhibit: Cards produced by witness Gray.*

Question 4. No.

Question 5. I haven't the least idea.

Question 6. I don't know.

123. Mrs. L. Klocke, 1720 Dreman Ave.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

5942 Question 5. I don't know.

Question 6. I don't know.

124. W. L. Haldy, 353 Howell Ave.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know anything about it.

5943 Question 6. I don't know anything about it.

125. Wm. H. W. Bergerman, 412 Bench St., Elmwood Place, O.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I haven't the least idea.

5944 Question 6. I don't know.

126. Wm. Johnston, Montgomery, O., Carpenter.

Question 1. I don't know.

Question 2. I don't know.

Question 3. I don't know.

Question 4. No.

Exhibit: Cards produced by witness Gray.

5945

Question 5. I don't know.

Question 6. I don't know.

127. H. G. Thal, Norwood, Bank.

Question 1. No.

Question 2. I don't know.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I can't tell that either.

5946

128. W. G. McCombs, 4002 Williamson Place,
none.

Question 1. No.

Question 2. Yes.

Question 3. I do not.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

129. Otto Palm, 2330 Ashland Ave., Traveler.

5947

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. Funk & Wagnalls.

Question 5. Got me.

Question 6. I couldn't say.

130. D. D. Barry, Middletown.

Question 1. No, I don't.

Question 2. No.

Question 3. Boston.

Question 4. I can't recall.

Question 5. A great many people.

Question 6. I don't know when.

5948

5949

Exhibit: Cards produced by witness Gray.

131. W. A. Grady, 118 E. 6th St.

Question 1. No, you get me.

Question 2. No, it does not.

Question 3. New York.

Question 4. No.

Question 5. Body of men.

Question 6. Don't know.

5950

132. E. Knepple, Harrison, Ohio.

Question 1. No.

Question 2. Yes.

Question 3. New York.

Question 4. No.

Question 5. Daniel Webster.

Question 6. I don't know.

133. Margaret B. Yutsey, Newport, Ky., Stenographer.

5951

Question 1. No, sir.

Question 2. No.

Question 3. Cincinnati and nearly all large cities.

Question 4. No.

Question 5. Webster, the first one; don't know any others.

Question 6. I do not.

134. E. E. Daily, Covington, Ky., R. R. Mail Service.

5952

Question 1. No.

Question 2. No.

Question 3. No, I don't.

Question 4. No.

Question 5. Webster himself, but not all of them.

Question 6. I don't know that.

Exhibit: Cards produced by witness Gray.

595

135. J. C. Baner, 11 W. Court St., Watchman.

Question 1. No, I don't.

Question 2. No.

Question 3. I don't.

Question 4. No, sir.

Question 5. Webster.

Question 6. I don't know.

136. Joseph Bechtold, 33 Farrell's Court, Clerk.

5954

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster himself.

Question 6. I don't know.

137. James Wolfe, Glenwood Building, Flat 12,
School.

Question 1. No.

Question 2. No.

5955

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I don't know.

138. John Golter, 21 E. 13th St., Notary and
Clerk.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

5956

Question 4. No.

Question 5. Webster.

Question 6. I don't know.

139. W. K. Runyon, Milford, O., Chocolate.

Question 1. No.

957 *Exhibit: Cards produced by witness Gray.*

Question 2. Yes.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I don't know.

140. D. Goldstein, 1000 West Ave., Merchant.

Question 1. No, I don't pay any attention to those things.

958 Question 2. By different publishers.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I don't remember.

141. Miss Keller, Montgomery, O., Stenographer.

Question 1. Several in Cincinnati.

Question 2. No.

959 Question 3. All the large cities.

Question 4. Syndicate Publishing Co.

Question 5. Webster.

Question 6. I don't know.

142. H. W. Gruife, 206 4th Ave., Dayton, Ky., Advertising Mgr.

Question 1. No, I don't; I have an idea G. & C. Merriam & Co., but not sure.

960 Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster originally.

Question 6. When Webster wrote it.

143. Isidor Wise, 56 Perrin Bldg., Newspaper.

Question 1. Merriam.

Exhibit: Cards produced by witness living. 2, 3/2

Question 1. Is true to me. It seems gotten out by that publication.

Question 2. No, I don't know of any other one excepting Connecticut.

Question 3. No, I don't.

Question 4. Successive issues of Editors, since the time of Noah Webster.

Question 5. Printed in each new edition. 2, 3/2

144. Lorenzo Bennett, 611 W. 4th, Ohio.

Question 1. No.

Question 2. No.

Question 3. New York, Philadelphia.

Question 4. I know of one, but don't know the publication.

Question 5. Professors of Universities.

Question 6. I couldn't say.

145. W. V. Plume, 1510 Chase Ave., Clark. 2, 3/2

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Various people, I presume.

Question 6. Changed from time to time.

146. L. L. Mann, 1000 Chapel St., Bristol.

Question 1. No.

Question 2. No. 2, 3/2

Question 3. No.

Question 4. No.

Question 5. Many men.

Question 6. Matter of evolution.

5965 *Exhibit: Cards produced by witness Gray.*

147. R. W. Staley, 1215 John Street, M. D.

Question 1. No.

Question 2. No.

Question 3. I do not.

Question 4. No.

Question 5. Any number of different people.

Question 6. Spelling is changed right along.

5966

148. Wm. Schmithorst, The Reumes Soap Co., Salesman.

Question 1. No.

Question 2. Certain publishers, yes.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. 1850.

5967

149. H. W. Fitzpatrick, 158 Elm Street, Ludlow, Ky., Student, University.

Question 1. No, I do not.

Question 2. No, sir.

Question 3. No.

Question 4. No.

Question 5. I thought Webster's did.

Question 6. When Webster was alive.

5968

150. O. E. Walker, 3712 Columbus Avenue, Mfg.

Question 1. No. Wasn't it Johnston?

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. About 1830 to 40.

Exhibit: Cards produced by witness Gray.

5969

151. Mrs. Sam Frost, Withelm Bldg., Avondale.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. When Webster lived.

152. Godfrey Brinkham, 1818 Sycamore, Mr. Auburn, Porter.

5970

Question 1. No, except Webster.

Question 2. No.

Question 3. No.

Question 4. No, sir. I do not.

Question 5. Webster.

Question 6. Long time ago.

153. Stanley Mullins, 24 E. 20, Covington, Ky., Office boy.

5971

Question 1. No, sir.

Question 2. Yes.

Question 3. New York.

Question 4. No.

Question 5. Webster.

Question 6. Some time ago.

154. Henry E. Bergman, 29 Fourth Street, Electrician.

Question 1. No, sir.

5972

Question 2. No, sir.

Question 3. No.

Question 4. No.

Question 5. Daniel Webster.

Question 6. About 100 years ago.

5973 *Exhibit: Cards produced by witness Gray.*

155. Vincent Roda, 229 E. Liberty, School.

Question 1. Webster.

Question 2. No.

Question 3. No.

Question 4. No, I don't know of any.

Question 5. Committee of men.

Question 6. 1850.

5974 156. Heine Young, Burlington Hotel, None.

Question 1. No.

Question 2. No.

Question 3. New York.

Question 4. Collier's Weekly.

Question 5. Heine Young.

Question 6. As soon as I was born.

157. John Gunzer, Reading, Ohio, Driver.

Question 1. No.

5975 Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

158. Charles Jones, Sailor Park, Janitor
School.

Question 1. No, I do not.

Question 2. No.

5976 Question 3. No, I do not.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

159. D. H. Fox, 563 Delta Avenue, Express
Messenger.

Question 1. No.

Exhibit: Cards produced by witness Gray.

5977

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

160. Mrs. Baumgardner, 1177 Harrison Avenue, School Teacher.

Question 1. No.

Question 2. No.

5978

Question 3. No, I don't.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

161. John H. Bocklet, 2871 McMicken Avenue, Clerk.

Question 1. No.

Question 2. No.

Question 3. No, I do not.

5979

Question 4. No.

Question 5. I couldn't say.

Question 6. I don't know.

162. F. Rabe, Fort Mitdhell, Ky., Cashier.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know. Took it for granted it was Webster.

5980

Question 6. I don't know.

163. Mrs. J. M. Jones, Newport, Ky.

Question 1. No, sir, I don't believe I do.

Question 2. No, sir.

5981 *Exhibit: Cards produced by witness Gray.*

Question 3. No.

Question 4. No, sir.

Question 5. No, sir. I don't know.

Question 6. I don't know that.

164. John R. Gray, Dayton, O., Traveler.

Question 1. No.

Question 2. No.

5982

Question 3. No.

Question 4. No, sir, I don't.

Question 5. I can't answer that.

Question 6. I don't know that.

165. Edith Gabel, 353 Foot Avenue, Stenographer.

Question 1. I don't know.

Question 2. No.

Question 3. No.

5983

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

166. Frederick Cole, 1314 Cabent Avenue, Electrician.

Question 1. No, sir. I don't.

Question 2. No.

Question 3. No.

Question 4. No.

5984

Question 5. No. I don't know that, either.

Question 6. I don't know.

167. James Mitchell, 622 Barr Street, Janitor.

Question 1. No.

Question 2. No.

Question 3. No, I do not.

Question 4. No.

Exhibit: Cards produced by witness Gray.

5985

Question 5. I don't know.

Question 6. I don't know.

168. Franklin R. Bowles, 1413 John Street,
Salesman.

Question 1. No.

Question 2. No, sir.

Question 3. No, sir.

Question 4. No.

Question 5. Don't know that.

5989

Question 6. Don't know.

169. G. R. Grandin, Walnut Hill, Leather Mfg.

Question 1. No, sir.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know that, either.

Question 6. I don't know anything about
dictionaries.

5987

170. Miss Rose Wolff, 2733 Erie Ave., Hyde
Park, Cleaner.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5988

171. Harry Blatz, 1948 Hammon Avenue, Office
Boy.

Question 1. No.

Question 2. No.

Question 3. No, sir.

Question 4. No, sir.

5989

Exhibit: Cards produced by witness Gray.

Question 5. Don't know.

Question 6. Don't know.

172. Wm. Brown, 170 W. 5th Street, Covington, Butler.

Question 1. No.

Question 2. No.

Question 3. No.

5990

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

173. Vernet Hermann, 419 Reading St., Stock.

Question 1. No. I don't know.

Question 2. No, sir.

Question 3. No, sir.

Question 4. No, sir.

Question 5. I don't know.

5991

Question 6. I don't know.

174. J. Hudpuhl, 409 McMicken Street, Beer business.

Question 1. No.

Question 2. I don't think so.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5992

175. John Amann, 1121 Park Avenue, Newport, Storekeeper, Pa. R. R. Co.

Question 1. No, I don't.

Question 2. No, sir.

Question 3. No, sir.

Question 4. No.

Question 5. I couldn't say.

Question 6. I couldn't say.

Exhibit: Cards produced by witness Gray. 5993

176. C. W. Gillis, Bangor, Me.

Question 1. No, I don't know.

Question 2. No.

Question 3. I don't.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

177. J. H. Yost, 174 Commonwealth, Detroit. 5994

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

178. H. A. Winans, 2527 Ashland Ave., Asst.
Foreman A. M. Laundry Machinery Co.

Question 1. No, I don't.

5995

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know. Noah Webster
wrote some of them.

Question 6. I don't know.

179. Frank Mills, Chicago, Ill., Traveling
Salesman.

Question 1. No.

5996

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

997 *Exhibit: Cards produced by witness Gray.*

180. T. Davidson, 309 Commercial Tribune,
Life Insurance.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

5998 181. J. Hobleyel, Millville, O., Paper hanger.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know a thing about it.

Question 6. Don't know.

182. Geo. Kleemore, 317 E. 13th, Stock Keeper.

5999 Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

183. H. Hewing, 1212 1st National Bank Bldg.,
Clerk.

6000 Question 1. I do not.

Question 2. No.

Question 3. No.

Question 4. No, sir.

Question 5. I can't answer that.

Question 6. I don't know.

184. Chas. F. Geiser, 1728 Race St., Book-
keeper.

Question 1. No.

Exhibit: Cards produced by witness Gray.

6001

Question 2. I couldn't answer that.

Question 3. No.

Question 4. No.

Question 5. I couldn't tell you that.

Question 6. I don't know that.

185. Maud Martin, 1222 Fifth Ave., Dayton.

Question 1. No.

Question 2. Yes.

6002

Question 3. Yes.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

186. Miss Rohlman, Good Samaritan Hospital, Nurse.

Question 1. No, I don't believe I do.

Question 2. Yes.

Question 3. Sure I know that.

6003

Question 4. No.

Question 5. I haven't any idea.

Question 6. I don't know.

187. John Zoller, Union Gas & Electric Co., Office.

Question 1. No.

Question 2. No.

Question 3. Michigan.

Question 4. No.

6004

Question 5. I don't know.

Question 6. I don't know.

188. Joseph Kirkub, 4119 Floral Avenue, Norwood, Life Ins.

Question 1. Merriam & Co.

Question 2. It depends upon what also goes with Webster which indicates the edition.

6005 *Exhibit: Cards produced by witness Gray.*

Question 3. Chicago.

Question 4. No.

Question 5. Merriams.

Question 6. I don't know.

189. G. E. Hauley, Cliftondale, Mass., Salesman.

Question 1. No.

6006 Question 2. Webster. Yes.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I don't know.

190. J. F. Barnes, 708 4th National, Stenographer.

Question 1. No.

Question 2. No.

6007 Question 3. No, I do not.

Question 4. No.

Question 5. Webster, I think.

Question 6. I don't know.

191. P. J. Lehane, 1247 Ida Street, Mt. Adams, Penna. Duty Rooms.

Question 1. No.

Question 2. No.

Question 3. No.

6008 Question 4. No.

Question 5. Webster.

Question 6. I don't know.

192. John R. Williams, 1829 Brewster, Clerk.

Question 1. No.

Question 2. No.

Exhibit: Cards produced by witness Gray.

6009

Question 3. No.

Question 4. No.

Question 5. Webster did, I presume.

Question 6. I don't know.

193. W. M. Simmons, 3224 Gilbert Avenue,
Commission Merchant.

Question 1. No.

Question 2. No.

6010

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. I don't know.

194. John Arnold, 4413 Station Avenue, Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6011

Question 5. Webster.

Question 6. I don't know.

195. Mrs. Geo. Selzer, Loveland, O.

Question 1. No.

Question 2. It does not.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I couldn't tell.

6012

196. A. M. Connor, 2181 Harrison Avenue,
Stenographer.

Question 1. No, I do not.

Question 2. No.

Question 3. No.

6013 *Exhibit: Cards produced by witness Grog.*

Question 4. No.

Question 5. Daniel Webster.

Question 6. I don't know.

197. Frank Zimmerman, 23 Green Street, And.
Shipping Clerk.

Question 1. Webster.

Question 2. No.

6014 Question 3. Yes, N. Y. Can. Chic.

Question 4. No.

Question 5. Webster and other great men.

Question 6. Don't know.

198. W. H. Roberts, Willsbury Avenue, Hyde
Park, England.

Question 1. No.

Question 2. No.

Question 3. No.

6015 Question 4. No.

Question 5. Competent men.

Question 6. I couldn't say.

LOUISVILLE, KY.

199. Tall E. Brown, 1306 W. Walnut Street,
Lawyer.

Question 1. No.

Question 2. No.

Question 3. No.

6016 Question 4. No.

Question 5. Authority.

Question 6. Constantly changing, couldn't
say.

200. Mrs. G. P. Harper, 2300 W. Broadway.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Exhibits: Cards produced by various boys

(21)

Question 1. No.

Question 2. Walker.

Question 3. Good many years ago.

211. Alex. G. W. Cook, 225 W. Franklin.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Walker.

Question 6. Long time ago.

(22)

212. L. M. Smith, 225 Second Street, Evans.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Walker.

Question 6. Way back in 1788 or 1789.

(23)

213. E. C. Wilson, 2725 Ohio Avenue, New
Haven, Conn.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. David Walker.

Question 6. 1788.

214. E. F. Greenhouse, 225 W. Walker Street, De-
pue.

(24)

Question 1. No.

Question 2. No.

Question 3. I don't know that.

Question 4. Don't know.

Question 5. About 4000 David Walker.

Question 6. About hundred years ago.

6021 *Exhibit: Cards produced by witness Gray.*

205. Edward G. Millet, 1415 Second Street,
Newspapers.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6022 206. Mrs. Edward White, 1111 Fourth Street.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

207. B. Dallenbach, L. & N. R. R. Co., R. R.

6023 Question 1. No, sir.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I never heard.

Question 6. I don't know.

208. S. Netter, 2118 Little, Foreman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

6024

209. Rodger H. Collins, 1342 So. 28th, Traveler.

Question 1. No.

Question 2. No.

Exhibit: Cards produced by witness Gray. 6025

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

210. Mrs. Inez Clark, 1013 E. Maple, Jeffersonville, Candy.

Question 1. No.

Question 2. No.

Question 3. No.

6026

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

211. Miss Lizzie Sham, 127 Roberts Ave., Stenographer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6027

Question 5. I never thought about it.

Question 6. I don't know.

212. Geo. Kendnek, 460 So. 4th, Jeweler.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Don't know.

Question 6. Don't know.

6028

213. Ed. McCrory, 1714 Magazine St., Lather.

Question 1. No, I do not.

Question 2. No.

Question 3. No, I do not.

Question 4. No.

6029

Exhibit: Cards produced by witness Gray.

Question 5. I can't answer that.

Question 6. And I can't answer that.

214. Lee A. Collins, 738 So. 18th, Newspaper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6030

215. A. Walter, 536 E. Madison, Porter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6031

216. F. H. Woeht, 621 So. 26th, Pianos.

Question 1. No, I do not.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

217. Geo. S. Bain, 2112 W. Broadway, Newspaper Business.

6032

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

Exhibit: Cards produced by witness Gray.

6033

218. Alfred Borket, 107 W. Walnut., Porter.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

219. J. G. Haymaker, Charlestown, Ind., 6034
Farmer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know that.

Question 6. I don't know that.

220. Frank T. Wilson, 321 Thomas Street, New
Allany, Ind., Printer.

6035

Question 1. I do not.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

221. R. O. Shircliff, 1328 Hull Street, Fireman.

Question 1. No, I don't.

Question 2. No.

Question 3. No, sir.

Question 4. No, sir.

Question 5. Guess it was Noah Webster.

Question 6. Don't know how long ago.

6036

6037 *Exhibit: Cards produced by witness Gray.*

222. Herman Rhea, 2019 Maple Street, Lumber Grader.

- Question 1. No, I don't.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Noah Webster.
- Question 6. I don't know.

6038

223. Holtz Kneche, 727 Caldwell, Tailor.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster & Help.
- Question 6. Couldn't tell.

224. S. P. Graham, 810 Magazine Street, Lumber Business.

6039

- Question 1. No.
- Question 2. Merriam.
- Question 3. No.
- Question 4. No.
- Question 5. The books tell for themselves.
- Question 6. I don't know.

225. Mrs. M. B. Tucker, Wult House, School Principal.

6040

- Question 1. Merriam & Co.
- Question 2. Yes Merriam & Co.
- Question 3. No.
- Question 4. I do not.
- Question 5. Committee of professors in colleges.
- Question 6. Different periods of revision of dictionary.

Exhibit: Cards produced by witness Gray.

6041

MILWAUKEE, WISC.

226. M. A. Grigsby, 327 E. Broadway.

Question 1. No.

Question 2. Yes, one would suppose so.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. Many years ago.

6042

227. M. C. Baldwin, 2804 Meinecke Ave., Supt.

Question 1. No.

Question 2. Several places.

Question 3. Phila.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

228. W. Davidson, 559 Laphain, Lumberman.

Question 1. No.

6043

Question 2. Only the Webster.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

229. M. Miller, 250 Pleasant St.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6044

230. G. S. Solentine, 218 22nd St.

Question 1. No.

Question 2. No.

Question 3. No.

6045

Exhibit: Cards produced by witness Gray.

- Question 4. No.
- Question 5. Don't know.
- Question 6. Don't know.

231. Helen M. Seifert, 651 Marshall St.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.

6046

- Question 5. Noah Webster.
- Question 6. Ages and ages ago.

232. D. Harthine, 1099 Booth St., School.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

6047

233. Mrs. Bertle, 712 Craemer St.

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. I don't know.

234. Murray Sullivan, 868 Mainetta, School.

6048

- Question 1. No.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Three years before he died.

Exhibit: Cards produced by witness Gray.

6049

235. Ida Powell, 763 42nd St.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

Question 6. Good time ago.

236. M. Mamney, 525 2nd Ave., Teamster.

6050

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. I don't know of any.

Question 5. I don't know.

Question 6. I don't know.

237. Miss Swenson, 591 Tenth Avenue.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

6051

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

238. Lucius H. Masfield, National Home,
Soldier and Printer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6052

Question 5. I don't know that.

Question 6. I don't know.

239. Milo Redford, 2725 Grant Avenue, Busi-
ness College.

Question 1. No.

Question 2. No.

6053 *Exhibit: Cards produced by witness Gray.*

Question 3. No.

Question 4. No.

Question 5. I have no idea.

Question 6. I don't know that I'm sure.

240. A. Genthe, 1114 Lloyd Street, Seamstress.

Question 1. No.

Question 2. No.

6054 Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

241. A. Fromherz, 172 Thirteenth Street,
Student.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

6055 Question 4. No.

Question 5. Noah Webster.

Question 6. Quite a while ago.

242. Edward Werba, 515 Chestnut Street,
School.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6056 Question 5. Noah Webster.

Question 6. About 50 years ago.

243. L. Mills, 1301 Winlake Avenue, Photo-
graph.

Question 1. No, I don't.

Question 2. No.

Question 3. No, I don't.

Exhibit: Cards produced by witness Gray. 6057

Question 4. No.

Question 5. Professors of different universities.

Question 6. Some comparatively new.

244. J. Ruplinger, 2315 Grand Avenue, Chauffeur.

Question 1. No.

Question 2. No.

Question 3. No.

6058

Question 4. No.

Question 5. Noah Webster.

Question 6. About 50 years ago.

245. J. Loeb, 820 American, Postman.

Question 1. No, I have no idea.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

6059

Question 6. I don't know.

246. C. R. Zillier, 2913 Chestnut, Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster originally.

Question 6. I couldn't tell that.

6060

247. M. Alexander, 718 Wells Street.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6061

Exhibit: Cards produced by witness Gray.

Question 5. I don't know.

Question 6. I don't know.

248. F. Kriegert, 779 Holton Street, Engineer.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6062

249. B. Roska, 485 Milwaukee Street, Drugs.

Question 1. I don't know.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6063

250. L. Suchil, 18 Brunks, Clerk.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

251. Mrs. Palmer, 1100 1st Street.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6064

Exhibit: Cards produced by witness Gray. 6065

252. Howard Bromvill, 296 10th Street, Machinist.

- Question 1. No, sir.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

253. J. Dougherty, 705 Cedar Street, Physical Instructor. 6066

- Question 1. No, I don't.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. I don't know.
- Question 6. I don't know.

254. J. Watrous, 223 9th Street, Ins. Clerk. 6067

- Question 1. No, not sure think Merriam & Co. one of them.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Hard to tell.
- Question 6. Don't know.

255. Florence Hartuny, Station D. Rural Route 2, School. 6068

- Question 1. Webster.
- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Don't know.

6069

Exhibit: Cards produced by witness Grog.

256. Geo. Kachin, 1118 4th, Wis. State Co.

Question 1. Different people.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Whether for a while for not different people.

Question 6. Some time ago.

6070

257. A. F. Schneider, 3620 Chestnut, Bruggin.

Question 1. Syndicate Pub. Co.

Question 2. No.

Question 3. I can't answer that.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

258. Wm. Gocher, 424 Island Avenue.

6071

Question 1. No.

Question 2. No.

Question 3. Every large city.

Question 4. No.

Question 5. Whether.

Question 6. I can't say.

259. Fanny Conington, 1057 Wall Street.

Question 1. South Wall Street.

Question 2. No.

Question 3. In every city.

Question 4. No.

Question 5. South Wall Street.

Question 6. I don't know.

6072

260. Harry Kuchler, 744 2nd Street, School.

Question 1. Whether & Worcester.

Question 2. No.

Exhibit: Cards produced by witness (long)

(b)(7)(D)

- Question 1: Minnesota and New York.
- Question 2: No.
- Question 3: Webster.
- Question 4: 10 minutes.

201. Eric Rosen, 300 Harting School

- Question 1: No.
- Question 2: No.
- Question 3: 1 hour and 15 minutes.
- Question 4: No.
- Question 5: Eric Rosen.
- Question 6: 1012.

(b)(7)(D)

202. J. Swartzberg, 1075 200 St., New York

- Question 1: Some time in N. Y.
- Question 2: Yes, 4 days.
- Question 3: New York.
- Question 4: No.
- Question 5: Originally Webster.
- Question 6: Long time ago.

(b)(7)(D)

203. H. Halachuk, 300 Sunset Ave., Santa Monica

- Question 1: No.
- Question 2: No.
- Question 3: New York & Chicago.
- Question 4: No.
- Question 5: Just Webster after that called by others.
- Question 6: That all depends on the words and when they were said.

(b)(7)(D)

204. J. C. O'Connell, 305 Queen Van Ness, San Francisco, Calif.

- Question 1: Irvine, Berkeley, Santa Fe

6077 *Exhibit: Cards produced by witness Gray.*

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Noah Webster and Staff and
new editions since his time.

Question 6. I couldn't give a definite date.

265. J. Hefferman, 305½ 26th Ave., Feed Mnfr.

Question 1. No.

6078 Question 2. We know Webster is stan-
dard.

Question 3. No.

Question 4. No.

Question 5. Combination of most learned
men in world.

Question 6. A long time before you and I.

266. L. E. Moessner, 50 Loan & Trust Bldg.

Question 1. No.

6079 Question 2. The name would influence a
person.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I haven't the least idea.

267. Would not give name; Policeman No. 1
Station, Milwaukee.

Question 1. Sentinel.

6080 Question 2. No.

Question 3. Milwaukee.

Question 4. Yes.

Question 5. I couldn't answer that.

Question 6. I don't know.

Exhibit: Cards produced by witness Gray.

6081

268. E. F. Whalend, 128 18th Street.

Question 1. I do not.

Question 2. Webster, yes.

Question 3. No, sir.

Question 4. No.

Question 5. I never thought of it.

Question 6. I don't know.

269. H. Whitten, 145 8th Belmont Hotel, Millwright.

6082

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I can't say.

Question 6. In the last 100 years.

270. W. A. Lord, 5018 Calumet Ave., Chicago, R. R.

6083

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster himself.

Question 6. Changed from year to year.

271. John Meyer, 2502 Clybourn, Barber.

Question 1. A firm in New York.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I don't know.

6084

272. J. C. Riedel, 768 34, Broker.

Question 1. No.

6085 *Exhibit: Cards produced by witness Gray.*

- Question 2. No.
- Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. I don't know.

273. L. P. Helmreich, 551 Sumint, School.

- Question 1. No.
- Question 2. No.
- 6086 Question 3. Almost any large city, Chicago, I think.
- Question 4. No.
- Question 5. College Professors.
- Question 6. Changed from time to time.

274. Chas. J. Andrews, 617 18th St., Solicitor.

- Question 1. No.
- Question 2. No.
- 6087 Question 3. No.
- Question 4. No.
- Question 5. Webster.
- Question 6. Webster's time and revised from time to time.

275. J. W. Trumbull, Racine, Wis., Clerk of Court.

- Question 1. No, I do not.
- Question 2. No.
- 6088 Question 3. Do not.
- Question 4. No.
- Question 5. Noah Webster and authorities.
- Question 6. Haven't slightest idea.

Exhibit: Cards produced by witness Gray. 6089

276. Mrs. L. Memjus, 605 Cudaby Apartment.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I'll have to look it up.

Question 6. Don't know.

277. A. Schoensee, 579 29th Ave., Messenger. 6090

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Webster.

Question 6. I don't know.

278. Edward Lesneewski, 1008 Midland Ave.,
Office Boy.

Question 1. No.

6091

Question 2. No.

Question 3. New York.

Question 4. No.

Question 5. Webster.

Question 6. Every year.

279. W. H. Zuehlke, 699 23rd, Timekeeper.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6092

Question 5. I don't know.

Question 6. I couldn't tell you that, either.

280. Rudolf Slaune, 1338 8th Ave., Saloon.

Question 1. No.

6093

Exhibit: Cards produced by witness Gray.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

281. Stanley Skibinski, 784 6th Ave., Shoe Shop.

6094

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

282. F. O. Kuehn, 557 Stoll Ave., Broker.

6095

Question 1. No, I don't.

Question 2. It does not.

Question 3. New York.

Question 4. No.

Question 5. Webster himself.

Question 6. About Webster's time and revised since.

283. L. Hawkinson, 613 17th St., Tailoress.

6096

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

284. Harry L. Bates, 1610 Chamber, Salesman.

Question 1. No.

Question 2. No.

Question 3. No.

Exhibit: Cards produced by witness Gray.

6097

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

285. C. G. Gernand, 1105 15th, Cashier.

Question 1. No.

Question 2. Several publishers; no, I don't.

Question 3. No; probably all principal cities.

6098

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

286. Geo. L. McLees, 481 Reid St., Gloves.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. Noah Webster.

6099

Question 6. I don't know.

287. W. Winzel, 676 Forest Home, High School.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

288. C. A. Kirchhoff, 816 17th St., Contractor.

6100

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6101 *Exhibit: Cards produced by witness Gray.*

Question 5. I don't know.

Question 6. I don't know.

289. Hugo Zunker, 1051 6th St., Typewriting machines.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

6102 Question 5. I don't know.

Question 6. I don't know.

290. G. B. Hibbard, 637 Summit Ave., Safes.

Question 1. No, I don't.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

6103 291. F. Hoffman, 626 Maryland Ave., School.

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

292. Henry Meyers, 336 25th Ave., Jewelry Clerk.

6104

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

Exhibit: Cards produced by witness Gray.

6105

293. A Jansen, 558 21st Ave., School.

Question 1. No.

Question 2. No.

Question 3. No.

Question 3. No.

Question 5. I don't know.

Question 6. I don't know.

294. Clifford Sheehan, 813 Jackson.

6106

Question 1. No.

Question 2. No.

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

295. Edith Lowum, 641 31st Street, Stenographer.

Question 1. No, I don't.

Question 2. No.

6107

Question 3. No.

Question 4. No.

Question 5. I don't know.

Question 6. I don't know.

296. Lyman G. Wheeler, Milwaukee, Lawyer.

Question 1. G. & C. Merriam (used to be).

Question 2. It had until recently. I suppose it was all one concern. 6108

Question 3. Chicago.

Question 4. I know Webster's unabridged was followed by Webster's International; I think by same publisher.

William M. Gray—Re-Direct.

6109

Question 5. I don't know.

Question 6. At no one period.

297. Mrs. Annette Delmand, 718 Cedar St.

Question 1. No, I do not.

Question 2. Yes.

Question 3. No, I do not.

Question 4. No, I do not.

Question 5. Webster.

6110

Question 6. I couldn't tell.

Re-D. Q. 154. How did the vast majority of the persons examined by you answer question No. 1?

MR. HALE: Objected to as calling for a conclusion of the witness; all of the answers given having been spread upon the record, and they may be counted and an accurate, exact answer obtained.

6111 A. In the negative.

Re-D. Q. 155. How did the vast majority of the persons examined by you answer question No. 2?

MR. HALE: Same objection repeated.

A. In the negative.

Re-D. Q. 156. How did the vast majority of the persons examined by you answer question No. 3?

A. In the negative.

Re-D. Q. 157. How did the vast majority of persons examined by you answer question No. 4? A.

6112 In the negative.

Re-D. Q. 158. How did the vast majority of the persons examined by you answer question No. 5?

MR. HALE: Same objection to each one of these questions.

A. I think the majority answered, "I don't know."

William M. Gray—Re-Direct.

61

Re-D. Q. 159. Of those who were able to give any answer to question No. 5, what did the vast majority answer? A. I think that they answered "Webster."

Re-D. Q. 160. How did the majority of those examined answer question No. 6? A. They answered "I don't know."

Re-D. Q. 161. Of those who gave some affirmative answer, what did the majority say?

MR. HALE: Same objection.

611

A. Well, I cannot recall that.

Re-D. Q. 162. Were the answers picked out by counsel for complainant usual or exceptional?

MR. HALE: Objected to as calling for a conclusion of the witness and as leading, and because the answers have been spread upon the record, and speak for themselves.

A. Exceptional.

Re-D. Q. 163. Would you say that they were in general unique?

6115

MR. HALE: Same objection.

A. I don't know exactly how the word "unique" would be applied there. Unique to those particular people, you mean?

Re-D. Q. 164. No, unique among the answers; they are unusual among the answers? A. Yes.

Re-D. Q. 165. On cross examination you were asked whether or not the persons were more concerned in getting the book that they wanted than in the name of the concern who published that book, and you answered to that question, "Yes." Did you mean by your answer to that question—

6116

MR. HALE: I object to the form of the question as obviously leading, and I wish

William M. Gray—Re-Direct.

to enter the objection before the damage is done.

MR. CARROLL: I will state at this point, that the question of complainant's counsel was so obviously leading, itself, that it is necessary in order to get the true understanding of this witness—a more particular question than would have otherwise been necessary.

MR. HALE: Complainant's counsel suggests that he was cross examining the witness and did not exceed his privilege.

Re-D. Q. 166. (Continuing)—that they were more interested in the contents of the book than in the concern which did the mechanical preparation of the book? A. Yes. I don't think they were interested at all in the concern that did the mechanical preparation.

MR. HALE: The answer is further objected to as a mere conclusion or guess of the witness, and motion is made to strike out out.

MR. CARROLL: This witness has made a careful and detailed study of the psychology of the public in connection with the word "Webster" and has qualified himself as an expert to answer all questions in connection with their understanding of the word "Webster."

MR. HALE: The asking of the six stereotyped and prepared questions does not constitute a thorough or even a fair investigation of the psychology of the public's mind in regard to the name "Webster" in connection with dictionaries, and this wit-

William M. Gray—Re-Direct.

6121

ness has testified that he pursued the inquiry no further but confined himself strictly within his instructions.

Re-D. Q. 167. You have testified on cross examination that a few of the persons questioned by you answered question No. 2 in the affirmative. Do you know what they meant by this answer?

MR. HALE: Objected to; the answers must be allowed to speak for themselves. 6122

A. I do not.

Re-D. Q. 168. From their general demeanor as they were answering the questions, and from all the surrounding circumstances, will you state what probably induced them to answer this second question in the affirmative?

MR. HALE: Objected to as obviously and highly improper and as calling for a mere surmise and guess of an employee of the defendant, employed for the purpose of making evidence for use in this case, his opinion upon such a question is obviously without value and wholly incompetent. 6123

A. I believe that they answered in the affirmative in order to display knowledge that they really did not possess.

MR. HALE: Motion is made to strike out the answer as obviously a mere guess or conclusion. 6124

Re-D. Q. 169. Was the answer to this last question in any way suggested to you by counsel for defendant or was it entirely your own conclusion drawn from the circumstances?

William M. Gray—Re-Cross.

6125

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and an attempt of defendant to corroborate his own witness in advance of impeachment. Complainant's counsel inquires whether the answer of the persons questioned are evidence when they meet with defendant's approval, and not evidence when they are unsatisfactory, which the witness' last answer on this line of examination would seem to indicate.

6126

MR. CARROLL: The answers of the various persons questioned have been given in full on the record. Any further facts in connection with those answers which the expert now upon the stand can give counsel for defendant wishes him to give, and counsel for complainant is at liberty to obtain from this expert any other facts in connection with this investigation which the expert has.

6127

MR. HALE: Complainant objects that this witness has not been qualified as an expert upon any branch of the case, but merely as a reporter of conversations held by him with various persons.

A. It was my own conclusion entirely.

6128

MR. CARROLL: That is all.

RE-CROSS EXAMINATION by Mr. Hale:

Re-x Q. 170. Did you ask anyone whether the name "Webster's dictionary" indicated to them any particular book? A. I asked no questions except those that were given to me to ask.

William M. Gray—Re-Cross,

6129

Re-x Q. 171. Did any of the persons say anything to you to the effect that the name "Webster" indicated to them a particular book? A. No, sir; I don't recall.

Re-x Q. 172. And you did not pursue the inquiry to that extent? A. I pursued the inquiry no further than the questions.

Re-x Q. 173. With what theatrical companies or theatres are you connected as manager? A. At the present time?

6130

Re-x Q. 174. At the present time? A. With none.

Re-x Q. 175. How during the last year? A. During the last year I have not been connected in the theatrical business.

Re-x Q. 176. How long since you have been actively connected in the theatrical business?

MR. CARROLL: Objected to as irrelevant and immaterial.

6131

A. It is about a year ago.

Re-x Q. 177. What were the last companies or theatres with which you were connected? A. The last theatrical company I was connected with, I was the manager for Mrs. Leslie Carter; since that time I was the manager of Dr. Cook, but I would not class that under the head of theatrical entertainment.

Re-x Q. 178. What has been your occupation since your last theatrical connection? A. I was for two years or nearly two years, a year and one-half, associated with the New York Baseball Club.

6132

Re-x Q. 179. And you were not in any special employment when you were employed to make this investigation; is that right. A. No, sir.

6133

Prof. Harry Thurston Peck—Direct.

MR. HALE: That is all.

MR. CARROLL: That is all.

6134

MR. HALE: The objection to this entire deposition upon the ground that the same is wholly incompetent, irrelevant and immaterial, and upon all the grounds especially taken or reserved during the taking of the deposition is here renewed and motion is made to strike out the entire deposition.

DEPOSITION CLOSED.

(Signature of witness waived by consent.)

Further hearing adjourned to to-morrow morning, Friday, June 14th, 1912, at 11 A. M.

6135

NEW YORK, Friday, June 14th, 1912.

Met Pursuant to adjournment.

Present: Counsel as before.

PROF. HARRY THURSTON PECK, a witness called by and on behalf of the defendants, having been duly cautioned and sworn, testified as follows:

6136

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Will you give your full name? A. My name is Harry Thurston Peck.

Q. 2. Your residence? A. My residence is 468 Riverside Drive, New York City, and County and State.

Q. 3. And occupation? A. Editor and author.

Prof. Harry Thurston Peck—Direct.

Q. 4. And age? A. My age at my next birthday will be fifty-five.

Q. 5. Have you during your life made some studies of the English language? A. Yes. I have practically without cessation made studies of the English language, literature more especially, but also language, and lexicography, and I have always done considerable lexicographical work, not always in English, but that has to do with the principles of lexicography. For example, if you want an instance, I made a brief lexicon of certain South African languages. It is published in the *American Journal of Philology* in 1887, Bantu languages especially. Then in Latin I made a lexicon of "Onomatopoeitic Words in Latin." I made a lexicon of all of the onomatopoeitic words in Latin language, and that was published in a book called *Classical Studies* in 1886, published by Macmillan, and I prepared a revision of *Louis & Short's*; it was laid before the American Philological Association at the request of several of the members, and had they taken up the revision which was then contemplated, they would have used what I had there, my material, because I had corrected all the errors that I could find, and added a large number of words that were there, and done the usual work of a lexicographer. Then in English I have written a book called "What is Good English?" and I have written a large number of essays and pamphlets and criticisms on the English language, too numerous perhaps or not necessary to mention, but just to show that I have been engaged in that sort of work for a long time. Then I have written a book called—I am mentioning books that are germane to the point—I have written a book that

613

6138

6139

6140

Prof. Harry Thurston Peck—Direct.

6141

was published since last year (1911) called the History of the Classical Philology, which had to do really with anything that was classic in English literature, as well as in Greek and Latin languages, and also I have written and published—Harper's published it originally—a book called a Classical Dictionary, or A Dictionary of Classical Literature and Antiquities. That was a lexicon, so I put it in here as showing I have done an

6142

extensive piece of lexical work. That was a dictionary of classical literature and antiquities published first by Harper's, and when Harper's had failed it was bought by the Americal Book Company, who now have their imprint on it. That was in 1896. And it is practically the only book used now in colleges and universities. They always have one copy of that book. It is a very extensive book, very large, as large as Webster's.

6143

Then I edited a series of thirty-two books, in conjunction with Professor Peas, formerly of the Leland Stanford University, a series called "The Students Series of Latin Classics." And likewise in the way of language I have edited the University Bulletin at Columbia, and contributed very largely to various classical publications, as for example, the University Quarterly at Columbia, the American Journal of Philology, the English Classical Review, and a number of publications of that sort. Those are the principal ones,

6144

however, and most important ones. The others would be nothing beside them. Then the affidavit contained a number of other works which perhaps are not necessary to mention. I have put some things in there, for example, I did not mention my revision of Louis & Short's.

Prof. Harry Thurston Peck—Direct.

6145

As it did not appear in print, it was not published, and perhaps did not have so much importance. Then I have been the editor-in-chief of the International Cyclopedia published by Dodd, Mead & Company, and the later work, the New International Cyclopedia, of which I was co-editor-in-chief with the late President Gilman of the Carnegie Institute, formerly of the John Hopkin's University, and as I say, I was for twenty-two years a professor of the Latin language and literature in Columbia University, and prior to that time was instructor and lecturer for eight years at the same university, and was for a year classical lecturer at Barnard College, and have been asked frequently to come back there. I have received quite a number of degrees, some honorary and some not. For instance, those of them not, a degree of A. B. From Columbia. I received the degree of A. B. in 1881. I received the degree of A. M. from Columbia University in 1882. This is all from Columbia. I received the degree of Litt.D., which is also from Columbia, in 1884. I received the Honorary degree of Doctor of Philosophy from the Cumberland University in Tennessee in 1883. I received the honorary degree of LL.D. from Alfred University in New York State, and at the Ter-Centenary of Columbia they conferred upon me for scholarship the honorary degree of Doctor of Laws. That was in 1904, rather recent, and with complimentary remarks. I have been invited to receive the degree of Doctor of Letters from Tufts College near Boston. That was in 1910. I have also been invited to go out and receive any honorary degree I chose from the University of the South. That year I don't remember. It was back in the nine-

6146

6147

6148

Prof. Harry Thurston Peck—Direct.

6149

ties. From the University of Michigan I received the same offer from Professor Kelsey, who represented the University, but I did not care to go so far in hot weather for the degree and I did not go. I was also invited to attend the anniversary of the University of Aberdeen, Scotland, and receive an honorary degree there, but it was not convenient for me to go that Summer, and so I did not go, but the offer was made. And two or three other foreign universities made the same offer, through President Butler of Columbia, and he urged me always to go, but I said, "What is the use of going over there just for another degree? I have got a bag full already." I spent a great deal of time in Europe. I studied at Oxford and Cambridge; I heard lectures at Berlin, and Paris University, and studied archaeology more particularly on the spot with Professor Lanciani of the University of Rome, likewise, and while in Rome I practically studied Latin at the Collegium Romanum. I don't know that there is anything further that I wish to add. I have done a great deal of desultory work, I mean in the way of study. That is, I mean when I have been abroad I used to go every Summer to lectures that were given at different universities, but that was more for studying methods than anything else, so it does not refer to lexicography; but only general knowledge.

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Q. 6. Were you connected in a teaching capacity with Columbia University? A. For thirty years; twenty-two years as professor, and then as instructor before that; instructor or tutor for eight years. That was all in Latin. But my Latin work there and Latin literature had a great deal to do with English, because I brought for-

Prof. Harry Thurston Peck—Direct.

6153

ward principles always from teaching Latin. In teaching Latin I tried to bring principles into the thing, showing practically that literature is one great world literature, and so I went far afield in English literature and French literature especially; but in Spanish and Italian also. After speaking of the history of classical philology I mentioned a lexical dictionary. The dictionary part should have gone together to make more harmony.

6154

Q. 7. Are you still connected with Columbia University? A. No, I have no connection with Columbia University.

Q. 8. When did your connection with Columbia University cease? A. In October, 1910.

Question and answer No. 9 omitted by consent.

Q. 10. Since that time what work have you been engaged in? A. Well, I was and am still in a certain sense associated with Dodd, Mead & Company as a sort of literary advisor. I have been connected closely with the Munsey Magazine, both as an advisor and as a writer, but not over my own name. I have written a good deal for popular periodicals, not over my own name, however, and I have acted as adviser to the Syndicate Publishing Company. This does not affect the dictionary that is in question.

6155

Q. 11. Your studies of course have given you an intimate acquaintance—A. May I stop to finish one more thing? I have spoken of myself simply as a lecturer in Latin or Professor of Latin with a tincture of English and other things. I was for a year or two years assistant in Hebrew at Columbia also, if that has any relevance. All this is equipment for lexicography or for the study of a dictionary.

6156

Prof. Harry Thurston Peck—Direct.

6157

Q. 12. Your studies of course have given you an intimate acquaintance with practically all of the important dictionaries of the English language?
A. Yes.

6158

Q. 13. Will you outline the history of lexicography in English in the most general way? A. In the first place, I would rather divide the dictionaries or lexicons into groups, into classes. That will save a good deal of time and I will give the best one of each, or the most famous one of each, and if you want any more I will do that, but of course I could refer to and cut out the pages of the latest Worcester which has a list of all the English dictionaries, and I might have made it an exhibit.

6159

Q. 14. The purpose of the question is to have you divide if possible, the various dictionaries?
A. Well, the English dictionaries—now, of course in English they say that dictionaries began in 1499, but you see you don't mean dictionaries that were written in Latin, even though they were written to teach English, do you?

6160

Q. 15. No. A. The first English dictionary, a real English dictionary, was a dictionary by a man named John Bolleker in 1616, called an Exposition of Hard English, and that I call the first dictionary in England. That was an explanation simply, or definition work, that contained definitions. That was to my knowledge the first English dictionary in English in England. I mean by English modern English, of course, practically modern English. The reasons are important. Mr. Hale knows, and it is hardly worth while for me to tell him, because he knows all about it, but the question is, do I know anything about it? There are several types of English, or, any dic-

Prof. Harry Thurston Peck—Direct.

616

tionaries you please, but of English dictionaries in particular. The first dictionary you might say of importance represents a type which is a word book, that is, a definer, and with a slight encyclopedic element. That is Webster, the dictionary of Webster, published in 1828. I omit his two little books he published in 1806. But the first type of English dictionary that I have in mind is a sort of combination of a definer and a little more than definition, that is, an encyclopedic element. That is, Webster quotes from authors to illustrate the habits of the wild ass, or something like that, whereas another type of dictionary would just define a wild ass and let it go at that. That is, I think the most popular type of dictionary, and it accounts for the great success of Webster; that is, it defines and gives enough collateral information to satisfy the reader. Then there is in the second place the pure word book, which I perhaps might have put in the first place, the pure word book. That is to say, a book with the titles of words given with simply their etymology and the bare definition, nothing amusing or interesting at all, but that many think to be best or highest type of dictionary, and the most famous specimen of that is a dictionary published in its final form in 1860 by John Ogilvie, a Scotchman, a graduate of Aberdeen, who suffered some accident which confined him to the house, and in his leisure he prepared a highly technical dictionary which appeared as I say in 1860 under the name of Webster's Imperial Dictionary, highly technical; he built it on Webster. It was very curious, because he took Webster's which was not a highly technical work, and worked around it and turned it into one, and that is oddly enough the source of a book

6162

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6165

Prof. Harry Thurston Peck—Direct.

that is purely encyclopedic, I might say, and not at all a pure word-book. Another type, a third type, is an encyclopedic dictionary, and that is the Century Dictionary. And another book, because we are all familiar with it, and a great many people of this country know it and a great many use it, the type of the word-book, plain, simple, hard definitions, and nothing else. And that is the Worcester. Of course he wrote dictionaries

6166

with Webster, and did all kind of things, but I omit those minor details. I am trying to bring out clearly the different types of dictionaries there are and the famous works you would pick out as an example. But the word-book type is represented by Worcester. His last edition follows a system just as Webster's last edition follows a system and theory; but the greatest thing in the word-book type is not finished. It is the new English dictionary published at the expense

6167

and under the direction of the English Philological Society, and edited by Drs. Murray and Bradley.

MR. HALE: Is that the one they call the Oxford dictionary?

6168

THE WITNESS: No, they call it the Clarendon Dictionary; the New English Dictionary does not mean anything, so they call it the Clarendon Dictionary, because practically it has the Clarendon principles, but the new imprint is that of the English Philological Society and it has been for twenty years—in 1890 it was half done, they had spent ten years on it, and now it is approaching completion. That is the greatest dictionary of its kind in the world and probably ever will be under those two scholars, who have labored and had any

Prof. Harry Thurston Peck—Direct.

6169

number of amanuenses or aids or assistants or helps. They have not spared any expense at all. And it is a huge, monstrous thing, and so expensive that probably nobody but libraries and very rich people will ever have a copy of it.

It does not come out in volumes exactly, but in parts like some of the German dictionaries.

MR. HALE: I want to interject an objection to part of what you are saying. The statement of the witness to the effect that John Ogilvie published a dictionary based upon Webster's dictionary, and that the same was published in England under the name of Webster's Imperial Dictionary, and the further statement of the witness that the Century Dictionary was in turn based upon Ogilvie, Webster's Imperial Dictionary of England, is objected to as incompetent, irrelevant and immaterial and not a fact within the personal knowledge of the witness, and motion is made to strike it out. 6170

THE WITNESS: The third type of lexicography or dictionary is highly encyclopedic, where practically every word is fitted out with anecdotes and illustrations and quotations and stories and so forth. The best type of that is the Century Dictionary in English and the Larousse Dictionary in French. Those are the different types; that is to say, the word-book, and the partly encyclopedic and the largely encyclopedic. 6172

Q. 16. Of which type is the Webster dictionary of 1828 which you have spoken of? A. It is the partly encyclopedic; it became more encyclopedic later.

6173

Prof. Harry Thurston Peck—Direct.

Q. 17. Was that the first English dictionary of that kind? A. Well, yes, to that extent; yes.

Q. 18. Would you say that the Webster Dictionary of 1828 was the first great example of that type of dictionary? A. Yes, to the best of my knowledge.

Q. 19. What earlier dictionaries were there of that type? A. In this country or England?

6174

Q. 20. In this country or England? A. In this country and England, both, Johnson was the standard work, the Johnson Dictionary, which appeared in 1775—1776 in England. Prior to that the standard had been the work of Nathan Bailey.

Q. 21. What relation was there between the Webster's Dictionary of 1828 and the Johnson Dictionary which you have mentioned?

6175

MR. HALE: Objected to as irrelevant, incompetent, immaterial and because not shown to be within the knowledge of the witness and as calling simply for an opinion.

A. There was no relation at all; Webster is an independent work, and in so far as he had to do with Johnson all he did was to criticise him. He had some very interesting things to say about him.

6176

Q. 22. What are the particular characteristics of the Webster's dictionary of 1828 other than those which you have already given by which you classify it in the slightly encyclopedic class? A. In answering that I should like to answer, out of Webster himself if you don't mind.

Q. 23. Surely. A. Webster has a chapter, I think it is 75, it is Chapter 75. I am quoting this "Of Dr. Johnson's dictionary and of the manner

Prof. Harry Thurston Peck—Direct.

6177

in which the following work is executed" (meaning his own). It is part of the preface to the original Webster, because Johnson having the greatest vogue of any lexicographer. Webster wants to point out wherein Johnson was defective and also to explain where he himself had struck out into a comparatively new field so I take it there are sixteen points in which Webster in that chapter sets forth his whole theory of lexicography negatively in criticising Johnson and positively in explaining what he himself has done. Now, I can give you that or, it is arranged in that way in the affidavit which you have in Webster's own words.

6178

MR. HALE: I suggest that you read it right into the record.

A. There is a special chapter in Webster's introduction in which he says, "Of Johnson's dictionary and of the manner in which the following work is executed." That is the title. Then he says there are eight defects in Johnson. Now, of course that is explaining his theory. These are Webster's own words, and when I depart from Webster's own words I will say so.

6179:

"1. The want of a great number of well-authorized words belonging to the language, even in common words of daily life."

"2. Another great fault is the manner of noting the accented syllables, the accent being laid uniformly on the vowel, whether it closes the syllable or not." As, for example "leader;" they put the accent on the "e" in leader, and then they put another accent, or they put an accent or a long mark on "e" in leader and put another mark after the syllable. You cannot do that by

6180

6181 *Prof. Harry Thurston Peck—Direct.*

accent. That makes "leader," or something like that, or "leeder." There is no way but to spell out a word.

"3. Johnson's orthography is not correct upon principle." That means of course that he had no regular system of spelling.

6182 "4. The omission of the participles, or most of them, is no small defect, as many of them, by use, have become proper adjectives, and require distinct definitions." As, for example, take the word "direct."

"5. The want of due discrimination in the definition of words that are nearly synonymous, at other times not." That is, sometimes synonymous, at other times not. That is, sometimes not, at other times not. I won't define or explain. Those are Webster's words.

6183 "6. There are in Johnson's distionary some palpable mistakes in orthography because the author mistook the true origin of English words."

"7. The mistakes in etymology are numerous," and for the same reason.

6184 "8. The manner of defining words in Johnson is susceptible of improvement. In more important words, and particularly verbs, lexicographers, either from negligence or want or knowledge, have inverted the true order in the definitions. There is a primary sense of every word from which all the others have proceeded; and whenever this can be discovered, this sense should stand first in order."

Those are the eight criticisms on Johnson. Here are his own eight points, explaining his own views about what he has done:

"1. Where the sense of the word is plain and indisputable I have omitted to cite any authority."

These are all Webster's words.

"2. In the admission of words of recent origin, a lexicographer has to encounter many difficulties. It would not be judicious to reject all new terms, as these are often necessary to express new ideas. It seems to be his duty to insert and explain all words which are used by respectable writers or speakers, whether the words are destined to be received into general and permanent use or not." 6186

They may die out; but while they are in use, the lexicographer should include them.

"3. Lexicographers are sometimes censured for inserting in their vocabularies vulgar words and terms of art known only to particular artisans. That this practice may be carried too far is admitted; but it is to be remarked that, in general, vulgar words are the oldest and best authorized words in language; and their use is as necessary to the class of people who use them, as elegant words are to the statesman and the poet. It may be added, that such words are often particularly useful to the lexicographer, in furnishing him with the primary sense, which is no where to be found but in popular use." 6187

"4. I have also inserted many words which are local in England, but which are no more a part of our present language in the United States than so many Lapland words. These, however, occur in books which are occasionally read in this country." 6188

"5. Law terms which are no part of the proper language of the United States are, however, retained, as it is necessary that the gentlemen of the bar should understand them. As to Americanisms, so called, these I have admitted" but it

6189

Prof. Harry Thurston Peck—Direct.

will be found that "most of the new words charged to the coinage of this country were first used in England."

"6. The etymologies of words should be given." (Dr. Webster says this of unabridged dictionaries; in his own abridgments, he has sensibly left etymology largely alone.)

6190

"7. In regard to words which have been introduced into the language in modern days, I have generally referred them to the language from which the English immediately received them. A great part of these are from the Latin, through French; sometimes, probably, through the Italian or Spanish:"

"8. In the orthography of certain classes of words I have aimed at uniformity; but I have not proceeded so far as my own wishes might dictate."

6191

That is all you ask. Those sixteen points are the ones that constitute Webster's system both negatively and positively.

Q. 24. Have you made a careful examination of each one of the early Webster's Dictionaries? A. I have.

Q. 25. Did you find that each one of those early Webster's Dictionaries was similar in that it embodied each one of them sixteen characteristics or requirements of Webster himself?

6192

MR. HALE: Objected to as irrelevant and immaterial.

A. Well, the 1806 Webster was too small. For instance, Webster says he gives illustrations from authors and so forth, but in a little book like the 1806 book he did not do it. But beginning with the 1828 book, which was his first great production,

Prof. Harry Thurston Peck—Direct.

6193

of course, down to the present time, except that I have not examined carefully the last edition, Webster's New International Dictionary, beginning with the American Dictionary of the English language in 1828 down to the New International Dictionary 1909, this system of these points are all found to have been observed both by Webster himself, and afterwards by those who succeeded him. They followed him. They are all Websterian, or Webster's. He set the pace and laid down the law, and all his successors have followed him.

6194

Q. 26. What do you mean by the term "Websterian"? A. I mean, following out the principles of lexicography laid down by Webster in these sixteen points, and it does not mean written by Webster, composed by Webster or anything of the sort, but following Webster in the sense that you would say of Verdi's Falstaff,—"That was a Wagnerian opera." The same is true of his last two operas, but purely that is like "Die Meistersinger." It has all the ear-marks of Wagner there, and I believe if it had been put forth with Wagner's name attached, no one would have found any difference; and so when I say a dictionary is Websterian it means it has followed carefully and intelligently the doctrines of Noah Webster. Let me come down to the dictionary question, which is better than to quote an opera. There was Ambrogio Calepino, in the Renaissance. The date is uncertain, but in the Renaissance, he wrote a dictionary, the first dictionary, that was in two languages. That is, he had a Latin-Italian Dictionary, that was a wonderful thing. They had always defined Latin by Latin before. Then the idea spread and they had a trilingual dictionary, which was also called a Calepinus, although Cale-

6195

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6197

Prof. Harry Thurston Peck—Direct.

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pino himself did not really make it, but the idea was his. It was a new thing. They went on finally, there were editions and editions. It must have been a glorious time for dictionary makers. There were dictionaries for every country. It was continued up finally to seven different languages. The definition would begin with Latin; that is to say, the word would be Latin, next the definition would be in Greek, next the definition would be in Italian, next German or English, and so on, in parallel columns, so a native of any country could pick up the book and find out what he wanted to know. Now, the last *Calepin* was made at the very end of the eighteenth century, and was called the *Calepino*, or in French they call it a dictionary "*Calepin*" to this day. Now, that is a case similar to what I mean by a dictionary being Websterian. There was a French Dictionary, only it was not Webster, it was *Calepino*. Then take another example. All the French directories in the large cities are called *Bottin*, because the first street or business directory in Paris was made by a man named *Bottin*. He has died, but the "*Bottin*" has passed into the language, and the "*Websterian*" has passed into the language. There is no implication in using the word "*Websterian*" that it necessarily means that Webster had anything to do with it except setting the model. Or if you please, take the other Webster—Daniel. Now, his style or eloquence is Websterian and people speak of it so. They say that Senator Corwin, who was one of the great orators of the thirties, forties or fifties, they say his eloquence was Websterian; not meaning that he copied from Webster, but that his style was sonorous, vivid and stately like that of Webster's.

Prof. Harry Thurston Peck—Direct.

6201

Q. 27. Do you use "Webster's" and "Websterian" as practically synonymous? A. Yes. I would prefer Websterian. I would prefer an adjective, in other words, to a noun. I don't think it makes any difference. They call a lexicon of Calepino, "Calepinus." I think an adjective is always better; like Byronic, for instance. But I don't think there is any difference at all. I was thinking of what I would do myself.

6202

Q. 28. You used the term Webster's Dictionary then in the same sense that you used the term Websterian, did you not?

MR. HALE: Objected to as irrelevant and immaterial, and because no such general usage is shown and this is limited to the usage of this one witness.

A. Yes, I would say that it is not limited to the fancy or taste or choice of this one witness, but to his observation and experience. He has found a great many people speaking of Webster's—Webster they will say is equivalent to a dictionary just as Calepino is equivalent to a dictionary in France, and just as Bottin is equivalent to a directory. I am using the adjective also. I think ultimately they will have some word that covers all dictionaries, and I think in a certain sense the name Webster covers most dictionaries. That is, with the multitude. They say "Give me a Webster," and they mean a dictionary, which doesn't necessarily mean a Webster Dictionary.

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Q. 29. Have you made a careful examination of the Webster's New Illustrated Dictionary, published by the Syndicate Publishing Company? A. I have.

6205

Prof. Harry Thurston Peck—Direct.

Q. 30. Have you made a careful examination of the Webster's New Century Dictionary, published by Cupples & Leon? A. I have.

Q. 31. Do those two dictionaries include the sixteen requirements or qualifications which you have suggested are or should be the characteristics of every Webster's dictionary?

6206

MR. HALE: Objected to as incompetent, irrelevant and immaterial, because calling for the opinion of the witness as to the Websterian test which he has set up and not going to the identity of the books themselves which is the sole test.

6207

A. In the sixteen points which Webster himself set forth he inserted one point, that is, that etymology should be given, and I said in my answer that he seems not to have meant it in abridged dictionaries. Now, with the exception of that one point, both these books follow out fifteen of Webster's sixteen points, and I think, I am not sure, but that Webster himself would not have attempted the etymology, that is too much, especially as these books had so many more words in than Webster's.

6208

Q. 32. Have you made a comparison of these books with some of the earlier editions of Webster's, so that you can say in addition to what you have already said, namely, that they embodied fifteen of the sixteen requirements of Webster, that they also have taken bodily the most important parts of the definitions written by Webster himself.

MR. HALE: Objected to as incompetent, irrelevant, immaterial, as calling for sec-



Vol. I, pp. 1-913.

Vol. II, pp. 914-1552.

Vol. III, pp. 1553-2093.

INDEX.

Pleadings.

	Page.	Vol.
Bill of Complaint against Syndicate Pub. Co.....	1	I.
Amendment to Bill	55	I.
Trade-Mark Exhibits	59	I.
Answer of Syndicate Pub. Co.....	951	II.
Replication	99	I.
Pleadings in Cupples & Leon case (omitted by stipulation).....	2090	III.
Order Re-opening Case for Sur-rebuttal.....	1911	III.

Complainant's Testimony.

Adams, John Quincy		
Direct	491	I.
Cross	496	I.
Bond, Charles D.		
Direct	106	I.
Cross	108	I.
Re-direct	111	I.
Re-cross	111	I.
Baker, Harris W.		
Direct	122	I.
Cross	128	I.
Boynton, Walter I.		
Direct	180	I.
Cross	184	I.
Buddecke, Walter M.		
Direct	258	I.
Cross	262	I.
Re-direct	268	I.
Re-cross	268	I.
Re-re-direct	268	I.
Re-re-cross	266	I.
Burlingham, E. Louise		
Direct	312	I.
Cross	315	I.
Re-direct	318	I.
Re-cross	316	I.

	Page.	Vol.
Britton, Sumner C.		
Re-direct	591	I.
Cross	596	I.
Cowles, Clinton W.		
Direct	101	I.
Cross	104	I.
Cooper, Joseph C.		
Direct	111	I.
Cross	115	I.
Re-direct	118	I.
Clark, George J.		
Direct	187	I.
Cross	190	I.
Re-direct	193	I.
Re-cross	193	I.
Re-re-direct	194	I.
Re-re-cross	194	I.
Crossman, Charles P.		
Direct	202	I.
Catharine, John Paul		
Direct	347	I.
Cross	349	I.
Re-direct	350	I.
Condit, H. M.		
Direct	387	I.
Clarke, William B.		
Direct	485	I.
Cross	488	I.
Re-direct	490	I.
Conroy, Michael J.		
Direct	634	I.
Draper, Andrew S.		
Direct	500	I.
Foley, Thomas F.		
Direct	278	I.
Cross	281	I.
Re-direct	283	I.
Re-cross	286	I.
Funk, Isaac K.		
Direct	362	I.
Cross	365	I.
Re-direct	367	I.
Fisher, Edith		
Direct	434	I.
Cross	436	I.
Gifford, John L.		
Direct	239	I.
Cross	243	I.
Re-direct	248	I.

INDEX.

	Page.	Vol.
Gash, Edward		
Direct	270	I.
Cross	272	I.
Re-direct	275	I.
Re-cross	276	I.
Geldart, Richard W.		
Direct	351	I.
Cross	352	I.
Re-direct	353	I.
Hughes, Henry E.		
Direct	320	I.
Cross	324	I.
Re-direct	328	I.
Haymaker, Homer A.		
Direct	368	I.
Cross	381	I.
Re-direct	386	I.
Hagarty, Laura Dunbar		
Direct	440	I.
Kronvall, Edward		
Direct	210	I.
Lutz, Arthur		
Direct	296	I.
Cross	299	I.
Re-direct	301	I.
Re-cross	301	I.
Monroe, Robert C.		
Direct	120	I.
Cross	122	I.
McCarthy, John D.		
Direct	288	I.
Cross	292	I.
Re-direct	293	I.
McMahon, Edward J.		
Direct	302	I.
Cross	305	I.
Re-direct	308	I.
Re-cross	310	I.
Re-re-direct	311	I.
Martin, George H.		
Direct	457	I.
Cross	459	I.
Re-direct	464	I.
Mead, Edwin D.		
Direct	472	I.
Cross	475	I.
Re-direct	480	I.
Re-cross	483	I.

	Page.	Vol.
Mawson, C. O. Sylvester,		
Direct	503	I.
Cross	554	I.
Murphy, J. F.		
Direct	617	I.
Cross	622	I.
Newberry, William W.		
Direct	402	I.
Cross	403	I.
Neuchterlein, Bernard		
Direct	444	I.
O'Neill, John J.		
Direct	465	I.
Cross	466	I.
Pickett, Harry Q.		
Direct	329	I.
Cross	331	I.
Pulcifer, Irving S.		
Direct	207	I.
Putnum, Irving		
Direct	390	I.
Cross	398	I.
Porter, Levi E.		
Direct	420	I.
Cross	430	I.
Re-direct	433	I.
Recalled:		
Direct	443	I.
Recalled:		
Direct	452	I.
Rogers, Charles		
Direct	195	I.
Robinson, Louis B.		
Direct	407	I.
Seybel, Frederick W.		
Direct	249	I.
Cross	252	I.
Re-direct	256	I.
Re-cross	257	I.
Smack, Ida B.		
Direct	354	I.
Cross	356	I.
Re-direct	361	I.
Timms, Charles J.		
Direct	340	I.
Cross	343	I.
Van Dyck, Henry H.		
Direct	332	I.
Cross	338	I.
Re-direct	339	I.

INDEX.

	Page.	Vol.
Washburn, Kirk N. .		
Direct	132	I.
Cross	164	I.
Re-direct	176	I.
Re-cross	178	I.
Re-re-direct	179	I.
Recalled:		
Direct	214	I.
Cross	233	I.
Re-direct	236	I.
Recalled:		
Direct	635	I.
Cross	653	I.
Re-direct	656	I.
Re-cross	657	I.
Washburn, Kirk N., Jr.		
Direct	198	I.
Wells, Halla		
Direct	416	I.
Cross	417	I.
Re-direct	419	I.
Wadlin Horace G.		
Direct	467	I.
Cross	470	I.

Complainant's Exhibits.

	Page Offered.	Page Printed.	Vol.
<i>Advertisements:</i>			
Defendant's Advertisements	174		I.
Defendant's Advertisement of May 4, 1912...	1164		II.
Additional Advertisements of defendant's book	414		I.
Washburn's Exhibit 1, pages from "The Tidings"	236		I.
Washburn's Exhibit 2, pages from "Sycamore Sentinel"	236		I.
Washburn's Exhibit 3, pages from "The Elliot Messenger"	236		I.
Washburn's Exhibit 4, pages from "The Pastor's Call"	236		I.
Washburn's Exhibit 5, pages from "The Church Invitation	236		I.
Washburn's Exhibit 6, pages from "Our Master"	236		I.
Washburn's Exhibit 7, pages from "St. John's Message"	236		I.
McCarthy's Advertisements	290		I.
McCarthy's Carton	290		I.
Lutz's Carton	302		I.

INDEX.

	Page Offered.	Page Printed.	Vol.
Burlingham's Carton	318		I.
Timm's Carton	341		I.
Halla Well's Carton	419		I.
Joseph Horne Co.'s Advertisement.....	621		I.
Reading Notices of Defendant's Dictionary in Pittsburg Post	621		I.
Advertisement of Defendant's Dictionary in Pittsburg Post of Feb. 12, 1911.....	622		I.
"Uncle Sam" Advertisement in Pittsburg Post	622		I.
"Uncle Sam" Advertisement clipped from Boston American of September 12, 1910....	649		I.
Specimen of Advertisements copied by de- fendant	649		I.
Dictionary Coupon used by Boston Ameri- can	640	640	I.
Dictionary Coupon used by Defendant.....	640	640	I.
Cut of defendant's dictionary sent to com- plainant	121		I.
Cut No. 1 returned to complainant.....	121		I.
Cut No. 2 returned to complainant.....	121		I.
Price-List of complainant's publications.....	659	659	I.
<i>Copyright Certificates.</i>			
Copyright certificates relating to Crown Dic- tionary	173	162	I.
Copyright Certificates of Webster Series....	215	721	I.
<i>Dictionaries:</i>			
<i>Complainant's Dictionaries:—</i>	Page Offered.		Vol.
Webster's Collegiate Dictionary	162		I.
Webster's Academic Dictionary	162		I.
Webster's High School Dictionary.....	162		I.
Webster's Primary Dictionary	162		I.
Webster's Common School Dictionary	162		I.
Webster's Condensed Dictionary	175		I.
Webster's Dictionary (1847 edition).....	570		I.
Webster's Dictionary (1864 edition)	570		I.
Webster's International Dictionary (1890 edition)....	570		I.
Webster's New International Dictionary (1909 edition)	570		I.
<i>Defendant's Dictionaries:—</i>			
Webster's New Standard Dictionary.....	206		I.
Webster's New Century Dictionary.....	206		I.
Exhibit B. referred to by H. W. Baker (Webster's New Standard Dictionary)	206		I.
Exhibit C. referred to by H. W. Baker (Webster's New Century Dictionary)	206		I.
Defendant's Book compared with British Empire Dictionary	508		I.

INDEX.

	Page Offered.	vii Vol.
Defendant's dictionaries purchased by witnesses:		
Burlingham's dictionary	318	I.
Catharine's dictionary	348	I.
Cowles dictionary	103	I.
Fisher's dictionary	434	I.
Foley's dictionary	295	I.
Gash's dictionary	295	I.
Geldart's dictionary	351	I.
Hughes' dictionary	322	I.
Lutz's dictionary	302	I.
McCarthy's dictionary	290	I.
McMahon's dictionary	304	I.
Pickett's dictionary	330	I.
Pickett's dictionary (flexible cover).....	330	I.
Pulcifer's dictionary	208	I.
Seybel's dictionary	208	I.
Timm's dictionary	341	I.
Well's dictionary	419	I.
Miscellaneous American Dictionaries:		
Balch's Complete Compendium	666	I.
Century Dictionary	571	I.
Craig's Dictionary	667	I.
Crown Dictionary (Exh. A. referred to by H. W. Baker)	206	I.
Donohue's Standard New Century Dictionary.....	665	I.
Excelsior Dictionary	668	I.
Hansell's Practical Illustrated Pronouncing Pocket Dictionary	667	I.
Hurst's American Standard Dictionary	666	I.
Hurst's American Unabridged Dictionary.....	666	I.
Hurst's American Popular Dictionary	666	I.
Hurst's Handy Reliable Dictionary	667	I.
Hurst's American Diamond Pronouncing Dictionary..	667	I.
Popular American Dictionary	668	I.
Standard Dictionary (Funk & Wagnall's)	570	I.
Student's Standard Dictionary (Funk & Wagnall's)....	570	I.
Worcester's Dictionary	570	I.
Miscellaneous British Dictionaries		
Annandale's Concise Dictionary	571	I.
British Empire Dictionary	507	I.
Cassell's Dictionary	571	I.
Chamber's Twentieth Century Dictionary	571	I.
Concise Oxford Dictionary	571	I.
Johnson's Dictionary (1799 edition)	570	I.
Nuttall's Dictionary	571	I.
Ogilvie's Imperial Dictionary (1883 edition).....	571	I.
Stormonth's Dictionary	571	I.
Student's Imperial Dictionary	507	I.

	Page Offered.	Page Printed.	Vol.
<i>Documents and Tables Relating to Contents and Origin of Defendant's Dictionary</i>			
Red Letter Exhibit Showing identity of defendant's dictionary with British Empire Dictionary	514	889	I.
Analysis of Price's British Empire Dictionary and defendant's Webster's New Century Dic- tionary	517	517	I.
Summary of Comparison of defendant's dic- tionary with British Empire Dictionary....	519	519	I.
British Spellings in defendant's dictionary....	525	525	I.
Cross-references in defendant's dictionary....	529	529	I.
Mixed definitions in defendant's dictionary..	533	533	I.
British definitions in defendant's dictionary..	535	535	I.
Words referred to in definitions, but not in vocabulary of defendant's dictionary.....	540	540	I.
Parallel Column Exhibit in Answer to Peck's Exhibit	551		I.
<i>Documents relating to use and Meaning of Name Webster as Applied to Dictionaries</i>			
Title Pages, Cover Inscriptions, and Copyright Notices of Webster Series.....	214	671	I.
Webster in the Courts	174	853	I.
<i>Early Contracts and Assignments</i>			
Webster Contract of 1853.....	215	783	I.
Lippincott Contract of 1858.....	215	795	I.
Contract and Assignment of University and Pocket Dictionaries	215	797	I.
Contract and Assignment of Webster's High School Dictionary	215	801	I.
Contract and Assignment of Webster's Acade- mic Dictionary	215	805	I.
Delegation of Power to Executors by Heirs..	215	809	I.
Contract between Heirs and G. & C. Mer- riam as to Abridged Dictionaries.....	215	810	I.
<i>Trade-Marks Exhibits</i>			
Registered Trade-Mark No. 1 filed with Bill..		59	I.
Registered Trade-Mark No. 2 filed with Bill..		61	I.
Registered Trade-Mark No. 3 filed with Bill..		63	I.
Registered Trade-Mark No. 4 filed with Bill..		65	I.
Registered Trade-Mark No. 5 filed with Bill..		67	I.
Registered Trade-Mark No. 6 filed with Bill..		69	I.
Registered Trade-Mark No. 7 filed with Bill..		71	I.
Registered Trade-Mark No. 8 filed with Bill..		73	I.
Registered Trade-Mark No. 9 filed with Bill..		75	I.
Registered Trade-Mark No. 10 filed with Bill..		77	I.
Certified copies of Registered Trade-Marks..	414	813	I.

Defendant's Testimony.

	Page.	Vol.
Carroll, Lauren		
Direct	1904	III.
Cross	1908	III.
Recalled:		
Direct	2040	III.
Cross	2042	III.
Doran, George Henry		
Direct	1193	II.
Cross	1197	II.
Donohue, Wm. F.		
Direct	1047	II.
Cross	1052	II.
Re-direct	1059	II.
Re-cross	1060	II.
Eckle, August E.		
Direct	1395	II.
Cross	1409	II.
Re-direct	1417	II.
Gray, William M.		
Direct	1432	II.
Cross	1438	II.
Re-direct	1454	II.
Re-cross	1532	II.
Hesslein, Max		
Direct	1001	II.
Cross	1009	II.
Re-direct	1014	II.
Re-cross	1015	II.
Leon, Arthur T.		
Direct	1240	II.
Cross	1254	II.
Re-direct	1289	II.
Re-cross	1293	II.
Little, Joseph J.		
Direct	1688	III.
Cross	1691	III.
Re-direct	1699	III.
Re-cross	1701	III.
McKnight, Robert		
Direct	1420	II.
Cross	1424	II.
Re-direct	1429	II.
Re-cross	1430	II.
Nolan, John W.		
Direct	1838	III.
Cross	1857	III.
Re-direct	1900	III.
Re-cross	1902	III.

	Page.	Vol.
Ogilvie, George W.		
Direct	1771	III.
Cross	1795	III.
Peck, Harry Thurston		
Direct	1534	II.
Cross	1562	III.
Re-direct	1677	III.
Re-cross	1684	III.
Recalled:		
Direct	1914	III.
Cross	1960	III.
Re-direct	1986	III.
Re-cross	1987	III.
Pfanstiehl, H. Josephine		
Direct	1017	II.
Cross	1020	II.
Re-direct	1021	II.
Re-cross	1022	II.
Re-re-direct	1023	II.
Rankin, Luther M.		
Direct	1024	II.
Rolfe, John Carew		
Direct	1988	III.
Cross	1994	III.
Re-direct	2017	III.
Re-cross	2020	III.
Sherwood, Robert E.		
Direct	1207	II.
Cross	1219	II.
Re-direct	1227	II.
Re-cross	1228	II.
Shultz, Herman		
Direct	1297	II.
Cross	1389	II.
Re-direct	1394	II.
Skeoch, Thomas I.		
Direct	1229	II.
Cross	1236	II.
Re-direct	1239	II.
Swift, Albert L.		
Direct	1140	II.
Cross	1149	II.
Re-direct	1182	II.
Re-cross	1186	II.
Re-re-direct	1190	II.
Re-re-cross	1192	II.
Recalled:		
Direct	1704	III.
Cross	1751	III.
Re-direct	1768	III.
Re-cross	1769	III.

INDEX.

	Page.	xi Vol.
Watrous, Francis M.		
Direct	2021	III.
Cross	2027	III.
Wright, Frank E.		
Direct	1061	II.
Cross	1083	II.
Re-direct	1113	II.
Re-cross	117	II.
Re-re-direct	1132	II.
Re-re-cross	1137	II.

Defendant's Exhibits.

	Page Offered.	Page Printed.	Vol.
<i>Advertisements and Newspaper Clippings</i>			
"Makers & Producers of Premium Special- ties"	1190		II.
Catalogue of Cupples & Leon with Notice....	1248		II.
Miscellaneous Newspaper Advertisements....	1706		III.
Miscellaneous Newspaper Advertisements.....	1714		III.
Advertisements in connection with "Web- ster's Condensed Dictionary" cut from St. Louis Republic	1719-1733		III.
Miscellaneous Newspaper Advertisements..1743-1747			III.
Advertisement from St. Louis Post-Dis- patch	1771		III.
Advertisements of the Springfield Union.....	1854		III.
Clipping from the Springfield Republican....	1855		III.
Advertisement from "Outing," (offered at final hearing)			

Copyright Certificates

Four certificates of copyright issued to Frank E. Wright	1739	1740	III.
---	------	------	------

Dictionaries.

No. 1. "Webster's Unabridged," published for the trade	1004		II.
No. 2. Webster's National Pictorial Dictionary	1018		II.
Webster's New Illustrated Dictionary.....	1080		II.
Webster's Condensed Dictionary, Twentieth Century Edition	1082		II.
Specimen Book, Webster's New Century Dic- tionary	1247		II.
Specimen Book, Webster's New Century Dic- tionary	1248		II.
Webster's Encyclopedic Dictionary	1828		III.
Webster's Universal Dictionary	1828		III.
Webster's Reliable Dictionary	1828		III.
Webster's Adequate Dictionary	1828		III.
Hill's Vest Pocket Webster's Dictionary.....	1828		III.

	Page Offered.	Page Printed.	Vol.
Wehman Brothers Latest Vest Pocket Webster's Dictionary	1828		III.
Peerless Webster Self-Pronouncing Dictionary	1828		III.
Excelsior Webster Pocket Speller and Definer.	1829		III.
Webster's Pocket Dictionary and Speller.	1829		III.
Webster's pronouncing Dictionary of the English Language	1829		III.
Hurst's Webster's Dictionary	1829		III.
A Concise Webster's Dictionary	1829		III.
Webster's Library Dictionary for Home, School and Office	1829		III.
Webster's American Standard Dictionary.	1829		III.
Webster's School and Office Dictionary.	1830		III.
Webster's Universal Self-Pronouncing Dictionary	1830		III.
Webster's Business and College Dictionary.	1830		III.
Webster's Modern Dictionary of the English Language for Home, School and Office.	1831		III.
Laird & Lee's Webster's Modern Dictionary.	1831		III.
Laird & Lee's Webster's New Standard Dictionary of the English Language, Elementary School Edition	1831		III.
Laird & Lee's Webster's New Standard Dictionary, Intermediate School Edition.	1831		III.
Laird & Lee's Webster's New Standard Dictionary of the English Language, Common School Edition	1831		III.
Laird & Lee's Webster's New Standard Dictionary, Illustrated Library Edition.	1832		III.
Laird & Lee's New Standard American Dictionary, Encyclopedic Edition.	1832		III.
Webster's Condensed Dictionary	1833		III.
An American Dictionary of the English Language, Noah Webster, published 1846 by Harper Bros.	1833		III.
John Ogilvie's "Imperial Dictionary," First Edition	1954		III.
Webster's New Illustrated, marked by Peck.	1959		III.
Webster's 1847, marked by Peck.	1959		III.
Webster's Twentieth Century Dictionary published by the Madison Book Company, Chicago, 1902	663		I.
<i>Documents and Tables Relating to Contents and Origin of Defendant's Dictionary</i>			
"Exhibit A," Prefatory Portions of Defendant's Dictionary	1560		III.
"Exhibit B," Introductory Portions of Webster's 1847	1559		III.
"Exhibit C," Peck's Identities	1556		III.
Tables Explanatory of Peck's percentages.	1960		III.

INDEX.

	Page Offered.	Page Printed.	xiii Vol.
<i>Documents Relating to Use and Meaning of Name Webster as Applied to Dictionaries</i>			
Cards of Witness Schultz	1308	1308	II.
Cards of Witness Gray.....	1455	1456	II.
Catalogue Cards from Library of Congress...	1780	1780	III.
Schedule produced by Witness Rankin.....	1026	1027	II.
Photographs of Covers and Title Pages of Dictionaries (Offered at Final Hearing)...			

Miscellaneous Documents:

Exhibits "A" and "B" Circular and Letter....	1132		II.
Telegram from Pittsburg Post to Swift.....	1726	1726	III.
Letter from Edward T. Roe.....	1906	1907	III.
Eleven Letters commending the Syndicate Dictionary	1706	1707	III.

Stipulations.

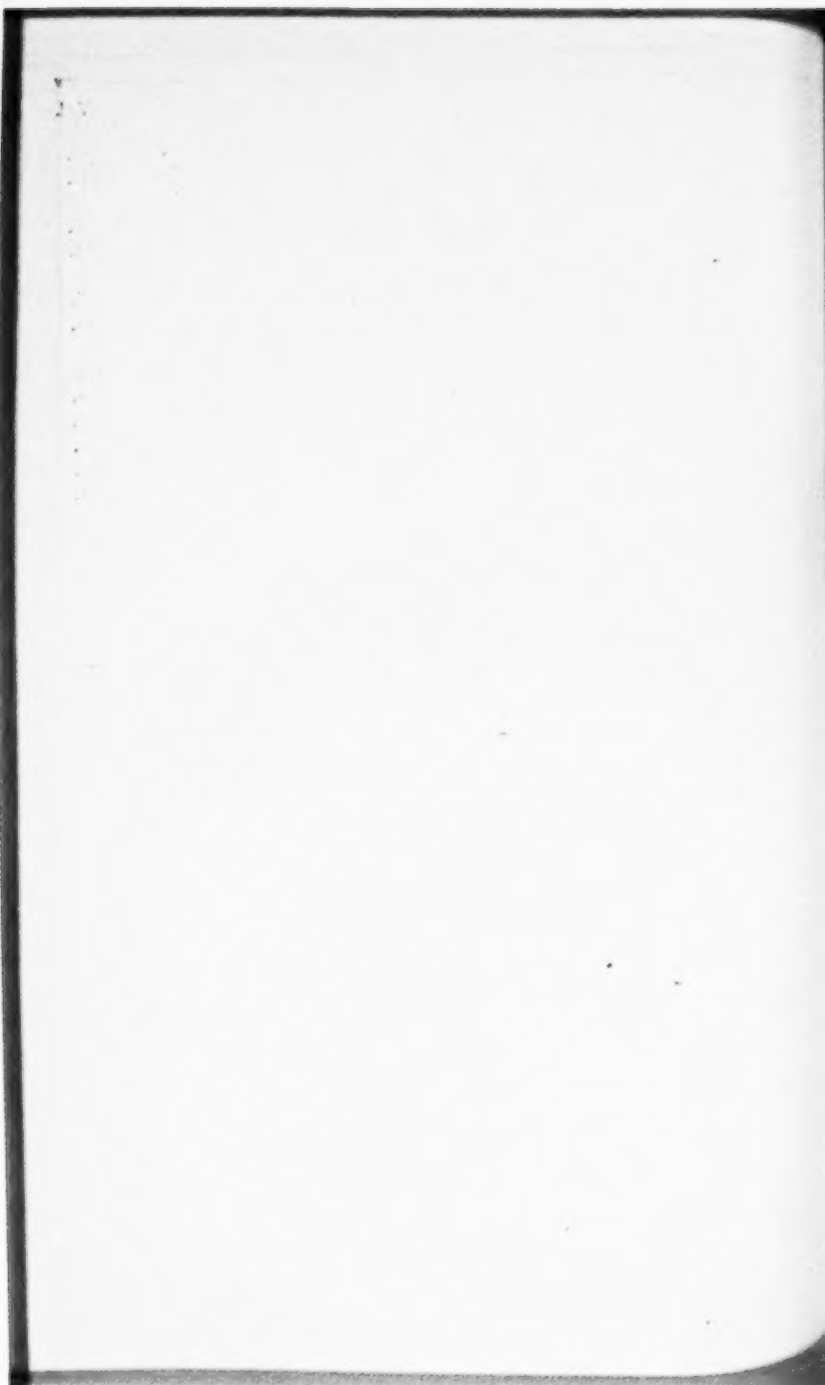
Substance of Stipulations.

	Page.	Vol.
Taking depositions by stenographer.....	101	I.
Waiving signature of witnesses	101	I.
Inserting affidavit of Harris W. Baker.....	122	I.
Inserting affidavit of Kirk N. Washburn.....	132	I.
Exhibits referred to in Washburn affidavit.....	173	I.
Taking depositions by stenographer.....	214	I.
Waiving signatures of witnesses	214	I.
Exhibits offered in evidence to remain in possession of party offering them	257	I.
Objections to testimony	295	I.
Dictionary of Ida B. Smack.....	356	I.
Reserving objections to testimony	373	I.
Inserting affidavit of H. M. Condit.....	387	I.
Taking depositions by stenographer	416	I.
Waiving signature of witnesses	416	I.
Waiving signature of witness Wadlin	467	I.
Inserting affidavit of Andrew S. Draper.....	499	I.
Taking testimony by stenographer.....	503	I.
Reserving objections	516	I.
Taking depositions in Chicago	521	I.
Dictionaries referred to considered in evidence.....	570	I.
Taking Chicago Depositions	591	I.
Reserving objections	611	I.
Production of Dictionary Exhibits	663	I.
Waiving oath and signature of certain witnesses.....	1046	II.
Taking depositions by stenographer	1061	II.
Waiving oath and signature of certain witnesses.....	1060	II.
Waiving oath and signature of certain witnesses.....	1061	II.
Spreading on record correspondence between parties....	1065	II.

	Page.	Vol.
Spreading on record correspondence between parties.....	1070	II.
Admitting exhibits offered with Wright affidavit.....	1080	II.
Admitting exhibits offered with Wright affidavit.....	1082	II.
Waiving oath and signature of certain witnesses.....	1140	II.
Taking depositions by stenographer	1140	II.
Waiving oath and signature of certain witnesses.....	1206	II.
Waiving oath and signature of certain witnesses.....	1228	II.
Consent that one objection apply to whole line of testimony	1234	II.
Waiving signature of certain witnesses.....	1239	II.
Spreading on record correspondence between parties.....	1243	II.
Waiving signature of certain witnesses	1297	II.
Consent that one objection apply to whole line of testimony	1304	II.
Waiving signature of certain witnesses.....	1395	II.
Consent that one objection apply to whole line of testimony	1403	II.
Setting forth letter to Eckle	1405	II.
Waiving signature of certain witnesses	1420	II.
Waiving signature of certain witnesses	1431	II.
Consent that one objection apply to whole line of testimony	1433	II.
Waiving signature of certain witnesses	1534	II.
Waiving signature of certain witnesses.....	1687	III.
Waiving signature of certain witnesses	1703	III.
Admitting newspaper advertisements in evidence.....	1732	III.
Waiving signature of certain witnesses	1771	III.
Waiving signature of certain witnesses.....	1827	III.
Admitting Saalfeld Books in Evidence.....	1827	III.
Admitting in evidence twenty-two Dictionaries of various publishers	1828	III.
Taking depositions by stenographer.....	1839	III.
Waiving signature of certain witnesses.....	1904	III.
Taking depositions by stenographer	1914	III.
Waiving signature of certain witnesses.....	1914	III.
Admitting complainant's affidavits of Mawson and Haskins	2046	III.
<hr/>		
Opinion on Final Hearing.....	2057	III.
Decrees:		
Merriam v Cupples & Leon Co.....	2071	III.
Merriam v Syndicate Pub. Co.....	2072	III.
Petitions for Appeal:		
Merriam v Cupples & Leon Co.....	2073	III.
Merriam v Syndicate Pub. Co.	2078	III.
Orders Allowing Appeal:		
Merriam v Cupples & Leon Co.....	2077	III.
Merriam v Syndicate Pub. Co.....	2083	III.

INDEX.

	Page.	xv Vol.
Assignments of Error:		
Merriam v Cupples & Leon Co.....	2074	III.
Merriam v. Syndicate Pub. Co.....	2080	III.
Appeal Bonds:		
Merriam v Cupples & Leon Co.....	2084	III.
Merriam v Syndicate Pub. Co.....	2084	III.
Citations:		
Merriam v. Cupples & Leon Co.....	2085	III.
Merriam v Syndicate Pub. Co.....	2086	III.
Orders as to Exhibits:		
Merriam v Cupples & Leon Co.....	2087	III.
Merriam v Syndicate Pub. Co.....	2088	III.
Stipulation as to Record on Appeal:.....	2089	III.
Stipulation to Abide Event.....	2091	III.
Stipulation for Certification of Record.....	2092	III.
Certificate	2093	III.



Prof. Harry Thurston Peck—Direct.

6209

ondary evidence, the books themselves being the best evidence of their contents, and the testimony of this witness being admissible only in so far as he points out identities or similarities, for which purpose the testimony is admissible to aid the Court in making its own comparison.

A. Yes, I have examined very carefully and compared these two books, with the Webster's edition, unabridged edition, of 1847, and I find that with the exception of that one point and one other, they correspond absolutely. They contain fourteen points out of the sixteen. Now, the other points that they have not noted or cared for—Webster says that in defining a word you should begin with the primary word or the primary form, the primary meaning, and take it in the order of its historical development. Now, these two books have not done that; that is, not consistently done it. Webster himself has not done it always, because he did not know—that is to say, etymology in his time was in a crude, rude, savage state; they etymologized by ear.

6210

Q. 33. Have you examined also the dictionaries of 1828, 1847 and 1864? A. I have.

6211

Q. 34. Are these dictionaries substantially similar in so far as they contain matter which could be and is used in these small dictionaries?

6212

MR. HALE: Objected to as incompetent, irrelevant, immaterial, as assuming a matter not proved in that the question assumes that matter contained in any one of the dictionaries mentioned of the Webster series are also contained in the defendants' dic-

6213

Prof. Harry Thurston Peck—Direct.

tionary involved in this suit, which fact has not been proven.

6214

A. It is a mere question of exhibiting the books. My examination tells me that the principal definitions under each head where the words coincide in the three dictionaries are identical, not merely in style or in thought and meaning, but in actual words; that sometimes a dozen definitions in order have been taken outright from Webster word for word, from the 1828 Webster or the 1847 or the 1864 Webster; it does not make much difference. Webster kept his definitions pretty much the same. They have been taken out of Webster and therefore they are Websterian and Webster's.

6215

Q. 35. Do you mean by the last part of your answer that sometimes twelve words in immediate sequence which are found in the two dictionaries of the defendants, have been taken outright from the three Webster's dictionaries which you mentioned?

MR. HALE: Objected to unless the witness will point out the words.

6216

A. No. I say there may be breaks, but I said where they appeared in all three. I don't know—I would not swear to that that there are twelve consecutive words, but twelve that are consecutive in the three books. That is as true of the 1864 as it is of the 1828 or the 1847. You cannot pin these books down to anyone of Webster's dictionaries, because Webster or his successors have followed faithfully his system of definitions. Where they have changed the definition I don't think they have improved as a rule; consequently

Prof. Harry Thurston Peck—Direct.

6217

these books, you cannot say whether they took them absolutely from the 1847 or 1864 or 1828, but I find that they might have taken them from either one or all, because Webster was fond of his own definitions and while he was alive he did not change them.

Q. 36. Have you examined critically the 1864 edition of Webster's Dictionary? A. Yes, the only part that counts. The introduction has no relation at all to the other two books we are speaking of, the books of the defendants, but the vocabulary I have examined quite carefully. 6218

Q. 37. What conclusions have you reached from your examination of the 1864 book?

MR. HALE: Objected to as incompetent, irrelevant, immaterial, and not within the issues, the question is further objected to as too general. Attention is also called to the fact that the 1864 edition of Webster's Dictionary was a copyrighted book at the time the defendants' books purport to have been compiled. 6219

A. It would not make any difference; you would find the same thing in the '64 and in the '47. The best definitions are those that Webster made himself and those who followed him never improved, to my mind; they added words but they have always kept the Webster definition somewhere. They are Websterian, you know. 6220

Q. 38. Now, then, answer the question: What conclusions did you reach from your examination of the 1864 edition? A. That they were essentially based or based upon the unabridged Webster's Dictionary of 1847, 1828 and 1864 possibly, but certainly 1828 and 1847.

6221

Prof. Harry Thurston Peck—Direct.

Q. 39. Did you compare in connection with your comparison of the vocabulary of the 1847 Webster with the two dictionaries of these defendants certain specimen pages? A. I did.

Q. 40. Have you marked those pages in red and blue? A. I have.

6222

Q. 41. Are these those pages (handing witness papers). I show you Exhibit C, filed with your affidavit, which was offered in opposition to the motion for preliminary injunction made by complainant in this case (handing witness Exhibit C). A. Yes, United States District Court.

Q. 42. Those specimen pages are taken from the Webster's New Illustrated published by the Syndicate Publishing Company? A. Yes, they are marked according to a system.

6223

Q. 43. What is that system? A. The word or words underlined in blue show that the said word or words are identical with those contained in the 1847 Webster in defining the same words. An upright blue mark in the margin opposite a paragraph shows that the paragraph is an abridgement of the like definition or definitions in Webster's treatment of the same word. In the third place, a word underlined with red in Webster's New Illustrated shows that it is not contained, or the definition was not taken from the Webster 1847. A red "O" in the Webster 1847 by the side

6224

of a word shows that it does not appear in the Webster's New Illustrated.

MR. CARROLL: I offer these specimen pages in evidence, they having been already filed in connection with said affidavit, and having been taken off the files merely for the purpose of this examination.

Prof. Harry Thurston Peck—Direct.

6225

(Pages referred to are marked Defendant's Exhibit C, June 14th, 1912, JAS. Exr.)

Q. 44. Have you made the comparison of both Webster's New Century Dictionary and Webster's New Illustrated Dictionary? A. Yes. I used them side by side and in that way they were compared.

Q. 45. Are the pages which you have taken from Webster's New Illustrated Dictionary and used in this exhibit which you have just explained practically identical with the pages in Webster's New Century Dictionary? A. Yes. There may be a few words different, but practically they are identical.

6226

Q. 46. So that if you had mechanically prepared similar pages taken from Webster's New Century Dictionary, the same result would have appeared as that which appears from these pages? A. Yes, absolutely.

6227

Q. 47. Are these all of the pages which were examined by you? A. Oh, no, I examined a great many more. I did not think it necessary, however, to paste them up and get them into shape. They are taken from the first and the middle and the last of the book, and I can furnish more. I have in fact prepared a number of others, but it would take some days to put them together and put them in that form.

6228

Q. 48. Are these pages taken at random? A. Yes, quite at random. I intentionally took some from the beginning of the book and some from the middle of the book and some from the end, and they were taken without looking to see what was in them at all, and then I proceeded to compare them.

6229

Prof. Harry Thurston Peck—Direct.

Q. 49. From your examination of these books are you able to state what proportion of them is taken bodily from the Webster's Dictionary of 1847?

6230

MR. HALE: Objected to as incompetent and as assuming that any portion of them was in fact taken from the 1847 edition of Webster's Dictionary, which is a fact not yet shown, and as not the best evidence, but merely the opinion of this witness; the best evidence being that of the editor who compiled the dictionary, Mr. Roe, with whom the defendant has been in communication, and who can be called.

6231

A. I would not endeavor to answer that. That is, I made no statistical computation, because I think the pages speak for themselves. You have there portions of the books marked in accordance with a definite system, and that is perfectly intelligible at sight and can give anyone a very definite opinion from examination; not to an exact degree of percentage, but in a general way.

Q. 50. Did you make an examination of the prefatory portion of each of these dictionaries of defendants? A. I did.

6232

Q. 51. Did you also examine the introductory portion of the Webster's Dictionary of 1847? A. Very carefully.

Q. 52. I show you Exhibit B, which was filed with your affidavit in opposition to the motion for preliminary injunction in this case, and ask you if that is the introductory portion of Webster's Dictionary of 1847? A. Yes, that edition.

Q. 53. Does that contain the sixteen require-

Prof. Harry Thurston Peck—Direct.

6233

ments which you have mentioned? A. Yes; the eight criticisms of Johnson and the eight points about Webster.

Q. 54. Where are those to be found in this exhibit? A. Why, here they are (indicating), and they are appropriately marked in red so that you will find them without any difficulty.

MR. CARROLL: I offer that in evidence.

(Papers referred to marked Defendant's Exhibit B, June 14th, 1912, JAS., Exr.) 6234

Q. 55. I show you Exhibit A, filed with your affidavit in opposition to the motion for preliminary injunction in this case, and ask you if that contains the prefatory or introductory portion of Webster's New Illustrated Dictionary? A. Yes, and of the other one.

Q. 56. And of the New Century? A. Yes.

Q. 57. What does your critical examination of these prefatory or introductory portions taken from Webster's 1847, and from the New Illustrated and New Century Webster's show you? A. It shows me there is no particular resemblance, except in the part relating to the origin or development of the English language, but there I should say it is my opinion after careful examination that the two and a half pages or three pages of both the books in question as compared with the Webster's 1847 had been drawn from the Webster 1847. They had condensed practically a long dissertation into a very short large lettered monograph. The ear-marks of likeness are the description of the account, the way in which they have followed the order of Webster in the parts that they have chosen to take; that is to say, the development of early English, and finally the blos- 6235 6236

Prof. Harry Thurston Peck—Direct.

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soming of modern English. They make the same reference, they refer to the same persons, and they in general seem not to have copied the wording verbally but to have copied the source, and necessarily they must have compressed it to get it in three largely lettered pages; they could not have done otherwise.

MR. CARROLL: I offer this in evidence.

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(Paper referred to marked Defendant's Exhibit A, June, 14th, 1912, JAS. Exr.)

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Q. 58. I find in your Exhibit B the introductory portion of the 1847 Webster at pages 50, 51, and 52, that you have marked certain paragraphs in blue? A. Those all go in that one thing. That is to say, I hold that the editor, in writing that matter about the origin of the English language and development of it, took bits all through this introduction here where it was historical, where it represented a part of the history of the English language, and that means—this is a part—you notice they speak of Anglo-Saxon and Norman French. You will find a number of these marks scattered through, because they did not take any one place. Webster was too diffuse for them, and so I read a great deal here and found the parts from which undoubtedly in my mind they culled, but they could not take it verbally, it would be too long, so I marked the passages that show the likenesses. Here is another one down here, page 51, they speak of Chaucer and all that. That is all indicated in blue marks. In fact, here is the end where it comes down to Queen Elizabeth, William and Mary, and King George. That is all marked, not because of any verbal similarity but because of the likeness in substance.

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Prof. Harry Thurston Peck—Direct.

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Q. 59. From your entire studies in connection with these two books of the defendant and in connection with your examination of the 1828, 1847 and 1864 Webster's Dictionary, what would you say about the two books of the defendant as to whether or not they are properly called Webster's Dictionary?

MR. HALE: Objected to as incompetent, irrelevant, immaterial and as calling for the opinion of the witness and his conclusion upon the matter at issue which is for the Court to determine, also calling for the conclusion of the witness upon a question of law.

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MR. CARROLL: It is not a question of law but a question of literature. This witness has been qualified as an eminent expert in all matters pertaining to literature, particularly the literature of the English language and English lexicography. His opinion as to the Websterian qualities of these books, and as to the propriety of calling them Webster's Dictionary is of the utmost importance.

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MR. HALE: There is probably no objection to the witness describing the literary contents of the book as Websterian in the sense in which he has defined that term, if deemed material, but there is an objection which has been stated to the witness expressing his opinion as to whether or not these books are properly called Webster's Dictionaries, the issue being as to the identity of the books designated by particular names and not as to whether they are Websterian or near Webster in quality.

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Prof. Harry Thurston Peck—Cross.

A. My opinion is that both of these books contain so large an amount of actual material taken from the Webster Dictionary of 1828, 1847 and 1864, and for the rest following so closely the scheme of the dictionary outlined by Webster himself that it is entirely proper to speak of each or both as Webster's, as the material is Webster's and the scheme is Webster's; the mere difference is in the form of printing and the lack sometimes of care. That is nothing to the 1864. But there is no more lack of care in these two dictionaries than in the Webster of 1864.

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Q. 60. What lack of care was there in the 1864?

MR. HALE: Objected to as irrelevant and immaterial, the merits of that book not being in issue.

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A. Misprints and errors of etymology, and the leaving out of a great many important words that were put in subsequently and that had been in the old Webster's Dictionary. I don't know how it happened, except naturally probably in throwing the whole thing into the caldron and stirring it up something fell out.

MR. CARROLL: That is all.

Recess until 2:30 P. M.

6248

CROSS EXAMINATION by Mr. Hale:

x Q. 61. Dr. Peck, what is your present connection with the Syndicate Publishing Company, if any? A. I am literary advisor and when they wish to have any of their publications, any particular additions made to their works, like some of the encyclopedias they publish, I prepare the matter.

Prof. Harry Thurston Peck—Cross.

6249

x Q. 62. How long have you been connected with the Syndicate Publishing Company in that capacity? A. Well, ever since August of last year.

x Q. 63. Since August, 1911? A. Yes.

x Q. 64. Had you ever done any literary work of any kind for the Syndicate Publishing Company before that date? A. No.

x Q. 65. You took no part then in the compilation or revision of the book published by them under the title "Webster's New Standard Dictionary" or "Webster's New Illustrated Dictionary?" A. Yes, I took some part in the preparation or at least in the alteration of Webster's New Standard Dictionary. They got out a small edition of that after I came to them and provided them with a list, rather hastily made, of typographical errors and suggestions for new words and so forth.

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x Q. 66. What date was that? A. That was in August, right then and there, because they began this Websterian at once, but in order that they might have copies enough of the Webster's New Illustrated, they printed from the plates before they were broken up, I don't know how many small editions, and while they were doing it I had been making an examination of it at Mr. Wright's request, and as a result of that examination I gave him a list of alterations, not enough, you understand—I did not go through it concisely and carefully and all that, but such things as came to me in the examination of it.

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x Q. 67. If I understand you correctly then in about the month of August, 1911, you suggested corrections or changes in their then existing Webster's New Standard Dictionary which were in-

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Prof. Harry Thurston Peck—Cross.

corporated in a small edition of that book published after that time? A. Yes.

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x Q. 68. About how many corrections or changes did you suggest at that time? A. Oh, a very small number. I did not suppose it was enough to count; just things that came to me that seemed to be necessary, about twenty or twenty-five or thirty perhaps,—just a strip of paper. I don't think they reprinted the whole. That I had really nothing to do with; I had nothing to do with the book except that. I went to work on the Websterian and that took a great deal of time, twelve or fourteen hours a day.

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x Q. 69. What you call the Websterian is a book issued by the Syndicate Publishing Company called the New Websterian Dictionary; is that correct? A. Yes. Let me speak of it for convenience perhaps by the term "Websterian" because I don't know of any other book by that title; New Websterian Illustrated.

6256

x Q. 70. In what connection had you been examining their previous book, Webster's New Standard Dictionary or Webster's New Illustrated Dictionary prior to August, 1911, and which led to your suggestion of a few changes? A. No direct capacity, in no direct connection with the firm, but in the anticipation of my making another dictionary. Mr. Wright asked me to look over and examine the New Webster's Illustrated so that I could see about the size, number of pages, and the general style of treatment which were found in that book, and which he wanted me to bear in mind in a certain way in making a new one so it would not be a violent break; the new one would run into the old. After the old one was exhausted the new one could be put upon the market.

Prof. Harry Thurston Peck—Cross.

6257

x Q. 71. As its substitute? A. As its substitute, or as a Webster's dictionary.

x Q. 72. About what was the date of that conversation with Mr. Wright, the first one on that subject? A. It was some time in August; I could not give you the date, but it was a matter—he asked me first if I would be willing to prepare a dictionary and then he said, "Well, before you make any arrangements about it, you take this and look it over." So I took it with me and looked it over. 6258

x Q. 73. Subsequently did you prepare the proposed new dictionary? A. Yes.

x Q. 74. Which has since been published under the name of the New Websterian? A. Yes.

x Q. 75. In preparing that dictionary did you have occasion to examine somewhat closer the previous dictionary? A. Yes, in fact, quite a little of the dictionary was incorporated in this. 6259

x Q. 76. So you went over the previous dictionary then word by word in the compilation of this second dictionary? A. Well, not quite word by word, no, but still quite thoroughly.

x Q. 77. Page by page at least? A. Page by page, yes.

x Q. 78. Did you cut up and use any part of the previous book as copy for the second dictionary? A. Certain parts of the old one were pasted on sheets and then were written all around and changed about as much as, for instance, one of the Merriam's books would be changed when they made a new edition. 6260

x Q. 79. In other words you made a real thorough revision of the prior book? A. More than that, unless you call a revision a remaking. If I had gone through it and corrected it simply that

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Prof. Harry Thurston Peck—Cross.

would have been a revision; going through it and adding five or ten thousand words and taking out perhaps several thousand words, altering the definitions and having added by the gentlemen whose names are there a large amount of prefatory matter which the old did not contain seems to me more than a revision.

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x Q. 80. I agree with you in that view. Would you say that this book prepared by you, the new Websterian, was based upon or founded upon a previous book called the Webster's New Standard Dictionary in the same sense that you have expressed your opinion that Webster's New Standard dictionary of the defendant is based upon or founded upon Webster's dictionary of 1847? A. No, this is more truly based upon Webster's dictionary of 1847 definitely. This Websterian book is based more definitely upon the Webster of 1847.

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x Q. 81. More so than its predecessor the Webster's New Standard dictionary? A. No, except that I used the New Standard Dictionary and then I had beside me the Webster 1847, because there was a good deal of information that was not in the other, for example, modern words in the vocabulary in modern words, of course, the 1847 Webster was substantially—well, it didn't have them in at all; words that developed since 1860 at any rate, and so going to that would not have done me any good, but there is the great bulk of literary names which does not change from generation to generation that I went to the Webster's 1847 for, and also examined the so-called Webster's 1828 and the Webster's 1864, although the Webster's 1864 not so much, because I did not think it was good.

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Prof. Harry Thurston Peck—Cross.

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x Q. 82. In this book that you compiled the you did actually take some of the matter from the 1847 edition of Webster's dictionary? A. Oh, yes, a great deal.

MR. CARROLL: I object to all this line of cross examination as utterly irrelevant and immaterial inasmuch as this Websterian book is in no way at issue in this suit.

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x Q. 83. Did you write the preface to the book called "New Websterian"? A. I wrote the preface using in it three or four sentences which were contained in the other, or perhaps paraphrasing them, I think is the better word. I would have to read them both through in order to tell you now.

x Q. 84. In this preface you refer to five rules that were first set forth by Dr. Webster in 1828. How do you reconcile that with the sixteen principles which you have stated upon your direct examination? A. Five rules? No, I meant five principles, which seemed to me the really important ones; that seemed to me did not matter. There are some there that lexicographers have taken out anyway, you will notice they are numbered five in the book. My numbering of fifteen is not Webster's numbering. I have split some of his principles and made two parts of them, especially with relation to etymology and orthography, where he has one paragraph and marked it 1, I may mark it 2.

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x Q. 85. In this preface I find the following language: "Dr. Webster for a long while had pondered over the subject of lexicography; and he came to his task with a full mind and with a definite conception of certain fixed principles as

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Prof. Harry Thurston Peck—Cross.

to what ought to go into the making of every dictionary. In the introduction to his original work he sets forth the principles so clearly and so convincingly as to constitute what we may call a Websterian method. The principles thus laid down if followed carefully entitle any lexicographer to call his book "Websterian", whether or not Webster himself ever had a hand in making it or whether any part of it be taken from a work of Webster. Many others have made dictionaries. Even some of Webster's descendants have done so; but in every case it may be said that by violating or forgetting the fundamental laws of Noah Webster, they have lost the right of using either the name "Webster's" or "Websterian." You then proceed to summarize the five rules; is that your language? A. That is what I wrote.

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x Q. 86. And does that accurately express your views upon that subject? A. Yes.

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x Q. 87. And is it in accordance with the theory there expressed that you have testified to-day that the defendant's book, Webster's New Standard Dictionary or Webster's New Century Dictionary are properly called "Webster"? A. Yes, because they have not departed essentially—you must understand that Noah Webster when he was writing had in mind entirely an unabridged dictionary; he was not talking about an abridgement or condensation, and therefore his requirements were very much higher, at least very very much more diffuse, he required more things than he would, as to an abridged dictionary. For example, in his own case, take abridgements that are made from his later edition; they don't contain all the sixteen points, but that is rather different.

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Prof. Harry Thurston Peck—Cross.

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x Q. 88. But is this the concise statement of the principle or theory upon which you stated upon your direct examination that the two books involved in these cases are properly termed a Webster's dictionary? A. Yes, they are properly termed a Webster's dictionary, because they retain so far as Webster would himself have retained in an abridgement the principles that he set forth and that were vital. Some of his principles are not so important as others, though he himself always followed them out. There is a mass of principles. In other words, if you get the Webster feeling, and you see that the thing is done in a Webster manner, you don't cavil and carp as a rule at a particular illustration you may find or definition or something, but you take the book as a whole to see whether it is constructed on a Websterian basis.

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x Q. 89. All I want at present is a fair and accurate statement of the theory or principle upon which you expressed your opinion upon that subject, and I presume this quotation from the language of the preface written by you is such a statement; is that correct?

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MR. CARROLL: I object to this question on the ground that the witness has already summarized his theory at least a half a dozen times throughout the testimony.

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x Q. 90. Is that correct? A. I would say yes, with the exception that in one case I have said sixteen by cutting up paragraphs, and here I mentioned five because they are taken as Webster took them and massing them in large paragraphs.

Prof. Harry Thurston Peck—Cross.

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x Q. 91. Is there anything in the quoted statement from your preface which you wish to qualify or change other than you have already done so?

A. Not to my knowledge, no. I might read it over and see. You must understand though, that I put on record the fact that the five principles in the one are identical with the sixteen principles in the other; that is only a way of grouping them, that is all.

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x Q. 92. In the quoted statement I find the sentence: "Even some of Webster's descendants have done so, but in every case it may be said that by violating or forgetting the fundamental laws of Noah Webster they have lost the right of using either the name "Webster's" or "Websterian."

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x Q. 93. To what works were you referring in that sentence? A. I was thinking of the 1864 Webster chiefly, because I know more about that than I do about the later ones, and I think by the infusion or injection of technical terms, although Webster himself says that you should have a modicum of technical terms, they have gone beyond the original quasi-encyclopedic method and have gone over into, the class of works which is represented best by the Standard Dictionary. Furthermore, if I may make another criticism on that book which I have in mind, they have made clumsy and awkward what Webster himself made easy and not difficult. That is, they have divided and sub-divided and they have taken one verb and put it under so many heads and they have had, not even verb transitive and intransitive, but they have had two or three verbs transitives and verbs intransitives and it was confusing. Now, Webster was always clear himself, but when it got into the hands of the Philistines it ceased to be

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Websterian. I cannot tell you much about the latest Webster, the latest book that was published by the Merriam's at any rate, because I have not used it.

x Q. 94. By the "Philistines" do you mean the Merriam Company? A. No, I mean anybody who chooses to alter the thing. That was a quotation anyway, you know, and not seriously meant, "in the hands of others." I think the biblical use of Philistines very often refers to an outsider. I was using the German sense, "Philister."

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x Q. 95. Is it your opinion that the 1864 edition of Webster's Dictionary published by the Merriams was not properly termed Webster's Dictionary? A. Well, I should say it was not Webster's Dictionary in the original sense.

x Q. 96. You have testified that the defendant's book in this case was properly termed a Webster's Dictionary? A. Yes.

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x Q. 97. And do you now testify that Webster's Dictionary of 1864 was not properly termed a Webster's Dictionary? A. I say it was less properly termed a Webster's Dictionary than that which Webster himself made; that they are one or two or several steps away from the Websterian edition.

x Q. 98. Are you aware of the fact that the 1864 edition of Webster's Dictionary was a book which became so widely known as Webster's Unabridged? A. Well, I think they all talk of Webster's Unabridged. Do you mean the 1864?

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x Q. 99. Yes? A. I don't think that is a point at issue; I mean to say, all the large dictionaries that are published either by Webster himself or by the Merriams were all unabridged, if they were unabridged. I did not know that was unabridged

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Prof. Harry Thurston Peck—Cross.

par excellence. Of course, you say Webster's unabridged, to distinguish it from Webster's abridged.

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x Q. 100. Don't you know that the 1864 edition of Webster's Dictionary was the one which was involved in the literary controversy waged through the public press and by pamphlets between Webster and Worcester as standard dictionary authorities in this country some forty years ago or more? A. Well, it could not very well have been, because Webster was dead. You said 1864, didn't you?

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x Q. 101. Yes. I am talking about the controversy over the books which ensued around or shortly after the publication of Worcester's Dictionary? A. That is to say, Webster had himself been revising and Chauncey Goodrich had also done a good deal of revising. Webster, however, was out of the field. He was feeble and old, as I understand, and Chauncey Goodrich had done considerable work which afterwards was incorporated in the 1864 dictionary, and that dictionary has the curious distinction of having as its chief editor a man who had been dead four years before it was published, and that was Chauncey Goodrich. I understand perfectly that the encyclopedic features which Webster admitted in his early books, which the Merriams have very largely increased, has widened the breach manifestly between the Worcesterians, if I may call them so, and the Websterians, and I know about the controversy to which you allude, but the controversy was carried on more on the outside than on the inside.

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x Q. 102. However, the books involved in that controversy were Worcester's Dictionary upon

Prof. Harry Thurston Peck—Cross.

6289

the one hand, and the 1864 edition of Webster's upon the other; is that not correct? A. Well, that is correct, but you must remember that Worcester's Dictionary came out first. It was a matter of four years—Webster's Unabridged was four years later.

x Q. 103. For how many years was Webster's Dictionary, the edition of 1864, the standard dictionary in general use in this country? A. Until about after the death of Chancey Goodrich, when Noah Porter took charge as sole editor as I understand it.

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x Q. 104. I think you misapprehend the question. For how many years was the 1864 edition of Webster's Dictionary published and used as the standard dictionary, known by the name of Webster's Dictionary among scholars and literary people in this country after its publication in 1864?

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MR. CARROLL: I object to the form of that question on the ground that it has nowhere been proved nor has this witness stated that Webster's Dictionary of 1864 was ever the standard Webster's Dictionary; in fact, he has already testified that he did not consider it a true Webster.

A. Well, there were other editions that bore the name of Webster. In fact, Webster, himself, you know, with Worcester, wrote one together, which was considerably in vogue, and I don't know whether that is a Worcester or a Webster. It is a kind of a Hybrid, but it was certainly a scholarly work, and after the publication of the 1864 book which bore the name Webster published by the Merriams, it was put forth and advertised by the

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Prof. Harry Thurston Peck—Cross.

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Merriams as the Standard Webster Dictionary. I did not say it was necessarily so accepted by scholars and literary men at all. I say that was the contention of the publishers, but as a matter of fact it was a very different book, and those who held with Worcester, I think, you will find a higher type of literary men and scholars is represented by the Worcesterians, a more finical type of scholar than by those who follow the Merriam Webster's, and they regarded the book I think with no very great admiration, or held it up as a standard at all, except the parts that were written by Professor Hadley in the preface and various other prefatory matter written by particular men, but I think the Webster, Webster as such, had gone out. I think it had become extinct. I think furthermore, if you wish me to say so, that the only prestige attached to the name of Webster is due to the other Websterian work which has been sold in great quantities all over the country at a less price, and represents to-day to the popular mind the lexicographical and glossological views of Noah Webster, and to get them in their entirety you have got to go back of the Merriams, you have got to go back of 1847. And that was not really a Webster book, though Goodrich did not change it very much.

MR. HALE: The answer of the witness is objected to as not responsive and motion is made to strike it out.

x Q. 105. You say you remember the controversy waged between Worcester and Webster subsequent to 1864? A. No, I don't remember any such thing, because Webster could hardly wage a controversy after he was dead.

Prof. Harry Thurston Peck—Cross.

6297

x Q. 106. I referred to the controversy between the two publications? A. Yes, the clash of books as you may call it.

x Q. 107. Clash of books, yes. You remember that? A. Oh, yes.

x Q. 108. And you state some scholars and literary men preferred Worcester? A. Yes.

x Q. 109. Some upon the other hand preferred the Webster 1864? A. Yes, and they would naturally term it the unabridged.

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x Q. 110. How long now was the unabridged Webster 1864, the book, published, sold and used under the name of Webster's Dictionary as that authority? A. Down to 1891.

x Q. 111. And it was succeeded by what book? A. By the International Dictionary of Noah Porter.

x Q. 112. And during all that period it was customary for scholars and literary men and for other persons to refer to one or the other of these books by the term Webster's Dictionary, was it not? A. You mean Webster or Worcester?

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x Q. 113. I am speaking of the book published by the Merriams when they preferred or used that as distinguished from the Worcester Dictionary? A. I am speaking of scholars and literary men. They would naturally speak of an unabridged book, and when they talked of an unabridged book and they would say a Worcester, they meant a Worcester, the unabridged Worcester.

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x Q. 114. And when they meant the Merriam book what name did they use? A. I say when they spoke of a Worcester they meant the unabridged work of Worcester himself. When they meant an unabridged representative of Webster, they might or might not speak of the 1864 edition

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Prof. Harry Thurston Peck—Cross.

brought out by the Merriam Company. I have no doubt that there are a great many as you say—and other people too, no, other people I don't think necessarily did—I know as a young man in a great many houses they had Webster's Dictionary. The Webster's Dictionary was the 1828 folio edition, and they did not go around and buy the book at ten dollars or six dollars afterwards when the Merriams got hold of it, because those books were too expensive, and Webster's Dictionary would go down in the family like so much old plate, and the 1828 Webster was the Webster, they might mean I think one of several books. They might mean the original Webster of 1828 which was really a Webster; they might mean the sort of hybrid Webster which was largely prepared by him but was published by his son-in-law in 1847, or they might again, because of the name on the cover, and the advertisement, mean the work published by the Merriams from the beginning of 1864 down until 1891.

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x Q. 115. By what name was the Merriam Unabridged Dictionary of 1864 commonly referred to from that date until the publication of the International? A. As an unabridged. You might say Webster's Unabridged, because that was the name that was put upon the back by the Merriams.

6304

x Q. 116. And that was the name by which it was ordinarily and usually called, was it not? A. As an unabridged book.

x Q. 117. Webster's Unabridged, was it not? A. They would say Webster's Unabridged, but they did not imply that there were not other Websters besides. That was an unabridged book.

x Q. 118. Is it your opinion that Webster's International Dictionary published first in 1890 was

not properly termed a Webster's Dictionary? A. I should say that it was termed a Webster's Dictionary somewhat as we said in discussion that Webster's New Illustrated is termed a Webster's Dictionary, no more, no less; that is, it had drawn very largely from the original Webster just as this small one was drawn. That was a large sort of watered Webster, and this is a small condensed Webster. The word Webster had become common; simply those who drew from the uncopyrighted Webster usually brought out abridged editions that made the distinction, because of course a scholar wants a large unabridged work.

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x Q. 119. I gather then that it is your opinion that none of the dictionaries published by the Merriam Company after the 1847 Edition is properly called a Webster's Dictionary; is that correct? A. Ah, yes, they are all properly called Webster's Dictionary.

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x Q. 120. And they have in fact always been called Webster's Dictionaries, were they not? A. Yes, they have, but I don't mean that there is any monopoly, for example, in the name. There ceased to be a Webster's Dictionary which you can put your finger on and say that is a standard dictionary.

x Q. 121. There has never been a standard dictionary authority in this country then known by the name of Webster's Dictionary since 1847; is that correct? A. There have been a number of books that have been so called, so-called in the advertisements by their publishers, and so-called by many people, but I hold that other books have also been called Webster's Dictionary and will continue to be and are. In fact, as I said before their sale, has kept up the prestige of the Merriam Webster.

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Prof. Harry Thurston Peck—Cross.

x Q. 122. What are the other dictionaries published under the name of Webster that have made the name famous in connection with dictionaries? A. Well, of course, the fame originally came before the Merriams were ever heard of. That is to say, the fame came when Webster brought out his 1828, and that was used and is used to-day, and the 1847 was really Webster's own work, to a great extent, except so far as special contributions were indicated in the introduction.

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MR. HALE: The answer is objected to as not responsive and motion is made to strike it out.

x Q. 123. Please specify particularly the books under the name of Webster which have been published since 1847 and which have contributed to the reputation of the name Webster in connection with dictionaries? A. Which have continued the reputation of Webster.

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x Q. 124. Name those books? A. There is the Ogilvie book which bore the name of Webster, that book by John Ogilvie, which I mentioned this morning.

x Q. 125. You mean the English edition? A. Yes. It was very highly technical, and done in a very scholarly way.

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x Q. 126. When was that published? A. That was published first in 1850, and the last edition of it—I am not sure whether it was the last edition, because it was merged, or at least used for the Century; but you objected to that answer this morning. Then I may say it is a matter of publicity. You are perfectly well aware of that. The Merriams don't advertise Webster's Dictionary very much. You would hardly know there was a

Prof. Harry Thurston Peck—Cross.

6313

Webster's Dictionary in the country if you left it to them; but all the other publishers of Webster's Dictionary, or the Websterian Dictionary, which ever you like, spend immense amounts of money advertising their books, and they sell them at prices—very good books they are, too, many of them—they sell them at prices which put the possession of them in the hands of people that could not afford to buy a great big, unabridged, ten or twelve dollar book. So I say that every book that bears the name of Webster's Dictionary has contributed to the benefit and the pecuniary profit of the Merriams, and in a way to perpetuating the name of Webster in connection with dictionaries. If there were not any small dictionaries bearing the name of Webster, I don't believe the Merriams could make any money out of their work. There have been millions of dollars spent in advertising these abridged dictionaries, and I think really the Merriams are making a mistake. I think they are cutting off their own noses as far as they can.

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MR. HALE: The answer is objected to as not responsive, and motion is made to strike it out. The witness is requested to please answer the question directly.

THE WITNESS: The witness will.

x Q. 127. I gather that your examination of Webster's New Standard Dictionary of the Syndicate Publishing Company, especially in connection with your compilation of the book called the New Websterian has made you very familiar with the contents of the Webster's New Standard Dictionary? A. Yes.

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Prof. Harry Thurston Peck—Cross.

x Q. 128. And it is partly upon that examination that you have based your testimony here to-day? A. Why, yes, naturally. That is what I was called in for. I was not supposed to testify about the Websterian.

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x Q. 129. And do you express it as your deliberate opinion that the Webster's New Standard Dictionary of the Syndicate Publishing Company conforms to all the principles laid down by Noah Webster in his introduction to which you have referred? A. All, so far as is possible in a condensed dictionary as opposed to an unabridged; that is to say, Webster had no notion of introducing etymological features.

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x Q. 130. We will bar etymology. A. Very well. In the second place it certainly conforms to one of Webster's most cherished views or principles that the vocabulary should be fresh and should be new, and that it should even include words whose place in the language is still undetermined so long as they are in use. You might have to take them out afterwards, but he believed in putting them in. That was the principle. I was particularly struck by the vocabulary of the Webster's New Illustrated in that it contained so many words of such recent origin, such as would not be found, I am sure, in fact, in many cases I have examined them, in any work published by the Merriam Company.

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x Q. 131. Do you claim that the new words added to— A. (Interposing). Of course they might be contrary to the principle of the present editor and his staff. Then there is a third point, because of the necessity of compression in the Webster's New Illustrated the words are not arranged, the definitions don't necessarily follow

Prof. Harry Thurston Peck—Cross.

6321

the historical development; neither do they in any dictionary whatever, completely, except the dictionary which is not finished, and that is the new English dictionary, the one I mentioned this morning, the Murray Dictionary, which does absolutely do so. But the others say they ought to do it but they don't. So I say that it conforms to those sixteen points as far as Noah Webster himself as shown in some of his own abridgements would make it conform. The main thing in a small book is, not the order of words, it is not the etymology, although there is some etymology in this, but it is in the definition. That is what the average man wants when he has the book by his side in the shop or in the office, simply to define a word, and how to spell it.

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x Q. 132. Spelling is as important as definition, I presume? A. Yes. And Webster consistently altered the spelling in three particular features, which I suppose I need not mention. That is an old story. In other words, he criticised Johnson for his orthography because it was not on principle. Webster wisely made three important series of changes in the orthography of his book and they were such that it did not jar people's nerves at all; their linguistic or orthographic nerves.

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x Q. 133. Please state fully Noah Webster's principles of spelling as exemplified in his dictionary? A. Well, his principles of spelling—in the first place, I might quote him, if you will allow me.

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x Q. 134. I wish you to go as far as you please? A. In the last of his eight principles and on his own book he thinks the spelling of the language should be simplified, but in that he has not gone

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Prof. Harry Thurston Peck—Cross.

6326

so far as he would wish, but he simplified in this way: In the first place, the three great simplifications which he effected and carried out and which dropped into the language, and they have even been adopted to some extent in English. That is, he has changed the spelling of the words in "our," like "honor," and "Saviour" to "or." And he did that as he said on principle. It was unprincipled really, because he had mistaken the words that came into the English from the Latin and French, and those that came directly from the Latin. However, that was his theory and principle, but he really was not much more correct in his principle than Johnson. The second point was that he changed the "ll" in words ending in "ller," to a single "l," making it like "traveler." Then finally he made a very important change when he altered the endings of words ending in "re" into endings in "er."

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Those were simple things. They did not jar people much. They modified very essentially the principles of our orthography, which in those cases had been Latinized or Gallicized and made them what he regarded as more truly English. Of course, he made a number of other spellings, but those three I call the three great successful changes that he made in the orthography of English.

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x Q. 135. Was it also one of Webster's principles upon which he laid stress that words of the same class should be consistently spelled in the same way in the respect mentioned or other respects alluded to by him? A. Yes.

x Q. 136. He laid considerable stress upon that, did he not? A. Yes.

Prof. Harry Thurston Peck—Cross.

6329

x Q. 137. Have these changes, those introduced by Noah Webster, been consistently followed in the defendant's book, Webster's New Standard Dictionary and Webster's New Century Dictionary? A. In the main, yes.

x Q. 138. What do you mean by "in the main"? A. I say, there may be some exceptions, just as there may be exceptions in Webster himself, but in the main, that was the object of the editors, I take it, from what I have seen of the book.

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x Q. 139. How far has he succeeded in that object, if that was his object? A. Oh, he succeeded; he succeeded sufficiently to show that he was following the example and precept of Webster.

x Q. 140. Do you know of any instance in which he did not follow the spelling adopted by Webster in the respects mentioned? A. I have none in mind at present.

x Q. 141. Did you discover any in your comparison of the book? A. Yes.

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x Q. 142. Did you change them to what you have termed the Websterian form in your compilation of the New Websterian Dictionary? A. No. As a matter of fact, I never held with Webster in those things, and to a certain extent I went back; words derived from the French, for example, I restored very largely, and whenever I had a chance; that is to say, after I made up my mind about it I changed back to the "re" which I prefer. I think it is more elegant and more consistent with the origin of the word. I don't believe in the Webster changes. I only say they were successful. I would not have one of them myself.

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x Q. 143. Did you think it Websterian for a

6333 *Prof. Harry Thurston Peck—Cross.*

dictionary to spell some of the class of words to which "center," "theater" and other words of that class belong with the final "re"; and other words of the same class with the final "er"? A. Well, it would be more consistent with Webster to have them all of the same type.

x Q. 144. And that was a principal upon which Webster laid stress, did he not? A. He laid stress, yes.

6334 x Q. 145. How about words ending in "our"? A. Well, I think you will find they are practically in the—what are you talking about now, the new Webster Illustrated?

6335 x Q. 146. The question is, would it be Websterian, to use your word, for a dictionary to spell some words of the class of "honor" with a final "our," and other words of the same class with the final "or," omitting the "u"? A. It might be, especially the word "Saviour," in which I find that the Webster's change shocked people. They still think of the sanctity of the word somehow as impaired by using the "or" spelling. There are not very many—you would not find enough to invalidate the general contention that all is Websterian in that book.

6336 x Q. 147. You will, however, find some words spelled in the defendant's Webster's New Century Dictionary and Webster's New Standard Dictionary in the manner rejected by Webster? A. Some few, yes.

x Q. 148. And you will find other words of the same class?

MR. CARROLL: He has not finished. Please go on.

Prof. Harry Thurston Peck—Cross.

6337

THE WITNESS: Some few, but really not enough to notice, except if one is very hypercritical.

x Q. 149. You will also find other words of the same class in which Webster's change has been adopted and followed? A. Yes; that is the majority of them, the greater majority.

x Q. 150. You have spoken in proportions. Can you give any estimate in numbers of the words in which they were departures from Webster's Standard spelling? A. No, I could not do that; I could not give you anything that is really statistical about it except to say that the great majority of words ending in "our" in English, in this dictionary end with "or," they follow Webster's rule, and the exceptions are quite exceptional.

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x Q. 151. Taking words of all classes to which Webster specifically referred in his introduction in which he adopted a uniform rule in his dictionary including words ending in "our" words with the "ll" before a final syllable, words ending in "re," and other classes of words to which Webster specifically refers, how many departures in your opinion would be permissible in this dictionary without forfeiting the right to call it a Websterian Dictionary? A. Well, that is a personal opinion. I should say ten per cent.

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x Q. 152. In other words, they might depart in ten per cent of the cases from Webster's spelling— A. (Interposing.) And still remain Websterian, yes.

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x Q. 153. Notwithstanding they violated the rule of consistency in spelling words of the same class to which Webster specifically referred? A. Yes, but then Webster himself has not followed that out absolutely; you will find, in the 1847 work

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Prof. Harry Thurston Peck—Cross.

some words ending in "er" spelling with "re."
I was thinking now what Webster did himself.

MR. CARROLL: Had you finished, Dr. Peck?

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THE WITNESS: I have not finished, but perhaps it was not relevant. I wanted to go on to say that I doubt whether you will find absolute consistency in any book that bears the name of Webster, but if you find so great a degree of consistency as to make it perfectly plain that there was a standard and that these are mere slips, I don't think that has any bearing on the case at all.

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x Q. 154. How could such a slip occur if the book was based upon or abridged from Webster's Dictionary itself? A. Well, it might occur. Unfortunately the proof readers are not always immune from prejudice or error or desire to change. I have found that to my sorrow very often, and they will put in a certain form of spelling, and it will even pass through the hands of the chief proof reader in a manner that the editor of the book would not approve of. I have had a great deal of sorrow in that direction.

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x Q. 155. Do you explain the departures from the spelling adopted in Webster's Dictionary of 1847 which occur in the defendant's dictionary to slips on the part of the proof readers? A. I should say that was the most probable explanation. Of course, I had nothing to do with making the books or with passing the book through the press, but in passing the other book, the Webster book, through the press I find that unfortunately the chief proof reader was an Englishman, or what is next door, a Scotchman, and he had a fondness for "our" and I had a fondness myself for "our." I

Prof. Harry Thurston Peck—Cross.

6345

was not trying at that moment to introduce "our." I was trying to keep it out; but between us I think there were some slips that passed his eye, and that were very grateful to mine. I perhaps did not see them. I don't think there were enough of those to base any argument on at all.

x Q. 156. You don't know how many of them there were, though, that used "our" instead of "or"? A. No.

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x Q. 157. At the time Noah Webster prepared his dictionary and introduced his ideas of spelling, was there any variation between English and American usage in that respect? A. In any class of words?

x Q. 158. In any class of words? A. Well, no, they had used in England at times the "or" spelling in certain words. Those that had been long in England and lost their French origin; and as to the "ll" there was a difference of opinion somewhat. That is why Webster was received in a way more easily than he otherwise would have been, but you may say practically the English usage was one and the same except where they spelled entirely wrong out of ignorance, and that was very often the case.

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x Q. 159. Was not the "our," and is it not to-day, a distinctive spelling of words of the class of "honor" and "labor"? A. In England, yes.

x Q. 160. That is the distinctive English form of spelling that class of words, is it not? A. Yes. The reason is, however, because most of those words came into English through the French under the form in "eur"; for instance, "honneur." They treated them as though they had come directly from the Latin "honor," whereas that was not so.

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Prof. Harry Thurston Peck—Cross.

x Q. 161. Is it not distinctively an English form of spelling to use the double "l" in such words as "jeweler," "traveler" and the like? A. "Jeweler" is double "l," yes.

x Q. 162. "Traveller"? A. Yes.

x Q. 163. And other words of that class? A. Yes.

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x Q. 164. What is the American form? A. The American form is one "l," and in England in the word "jewelry" they put in an extra "e."

x Q. 165. Is it not a distinctive English form to use the final "re" in such words as "center," "theater" and the like? A. Yes.

x Q. 166. And is not the distinctive American form "er"? A. Now, yes. Well, I am not sure; I would not say that about "center." That question of "re," I think as many people spell in "re" as they do in "er."

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x Q. 167. But generally words of that class the English form is "re" and the American form "er"? A. Well, no. I think the upper classes in England spell in "re." And a great many other people spell in "er." In fact, I know that is so from observation.

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x Q. 168. And is it not true that Webster was primarily the cause of the adoption and fixing of the American usage in the several classes of words referred to? A. Yes, but not through his dictionary; through his spelling books, of which there must have been some ten in England.

x Q. 169. And that spelling was also adopted and used in his dictionary? A. It was used in his dictionary.

x Q. 170. And insisted upon by him in his introduction— A. (Interposing) I must ask to have the answer fully given. That is to say, Web-

Prof. Harry Thurston Peck—Cross.

6353

ster might have done a thousand things that had nothing to do with his dictionary. Now, his spelling book circulated to the extent, I am told, of seven or eight million. That was in every school all over the country for years and years and years. I remember it myself. That was in everybody's hands. That is what did it; not the dictionary. The dictionary had no special influence except as supplementing in a way the work of the spelling book. You see, his dictionary circulated in England, because they said, "Oh, well, never mind. This is a good dictionary. We don't mind this barbarous American spelling." It never took hold. Why did it take hold in the United States? Not from the dictionary, but from the spelling book.

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MR. HALE: The concluding portion of the witness's answer is objected to as irresponsible and argumentative and motion is made to strike it out.

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x Q. 171. There is, however, at the present time in numerous words a difference between English and American usage, is there not? A. Yes, both in spelling and usage, of course, grammatically and otherwise.

x Q. 172. Which usage does defendant's dictionary follow, the American or English usage? A. The American usage.

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x Q. 173. Uniformly? A. Well, unless there may be a few slips. There again I say it is possible that some few English spellings crept in; in other words that is the standard of the book obviously.

x Q. 174. Even where the spelling followed in the books is diametrically opposite to the spell-

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Prof. Harry Thurston Peck—Cross.

ing specifically advocated in Webster's Dictionary? A. I did not say that.

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x Q. 175. Well, I ask you, is that true? A. I say that this book is Websterian, or that that book is of the nature of Webster's book, because its standard is the standard set by Webster, and if there are any variances on Webster's spelling it is either due to the carelessness of the proof reader or somebody's negligence. It is not intentional and is not to be considered, because that can be taken out in a revision. I don't think it is important. I don't think it occurs often enough really for you to make a point of if you were to go to work to count it.

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x Q. 186. But you don't know how often it occurs? A. I don't know how often it occurs, but I say you get an impression reading through a book, which is a safe impression,—if it had occurred very often, or if it occurred even frequently, or semi-often, it would have made an impression on me, it would have made a great deal more impression on me, because it has not occurred; once in a while I would see it.

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x Q. 187. You have suggested that the departures from the Webster's dictionary might have been due to slips in proof reading, or other like accidents. Might it not also be due to the fact that defendant's book was in truth based upon an English dictionary? A. Well, I don't know that fact in the first place; in the second place, I am sure it was not intentional, and then your theory is just a theory. I don't know; I cannot say about that, because I know nothing about any English connection that this book had. It is certainly extremely American in its vocabulary; more so than Webster.

Prof. Harry Thurston Peck—Cross.

6361

x Q. 188. Did you compare this book with any English book? A. I compared it with Stormonth. I did not want to compare it with any larger book, but Stormonth is a good every day kind of a book and I compared the vocabulary with that.

x Q. 189. What did you find in that comparison? A. And there is another English book—I am sorry I don't recollect the name of the author. I think it was Dr. Bond but I am not sure. That is another English book with which it was in part identical.

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x Q. 190. What is the name? A. I don't know. I think it was Bond. I can find out and put it in the final record if you want. In Stormonth I found he used the new English spelling and that defendant's Webster was based upon the American spelling.

x Q. 191. You found that the book was not based upon Stormonth or abridged from it? A. There were no signs of the book being abridged from Stormonth.

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x Q. 192. With what other English dictionaries did you compare defendant's book? A. I did not compare it with any.

x Q. 192. And with what other American dictionaries did you compare defendant's book, if any? A. There were two or three small dictionaries lying around, and while I made my regular comparison, as a strict comparison between this book, I mean to say the Webster's New Illustrated and the New Century, and the book the name of which I have forgotten when we were talking informally out here—the Reliable Webster. I compared it with that, although that is a smaller book, a very good book, and I thought that was about enough. It is not as though I was comparing two great unabridged works, for instance, the Standard and the Century, or something like that.

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Prof. Harry Thurston Peck—Cross.

x Q. 194. You did not compare defendant's book with all dictionaries to which you might obtain access with a view of finding out which book it was really based upon or abridged from, did you? A. There were other books, there were books edited by a Mr. Roe, and there was a book edited by Mr. Thomas H. Russell. I took them all, and they all went back to the Webster's 1847 as far as I could make out.

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x Q. 195. I would like to know—A. (Interposing) Only the Webster's New Illustrated had a great deal more modern vocabulary than any of the others.

MR. HALE: The last answer is objected to as not responsive and motion is made to strike it out.

THE WITNESS: It is describing what I found in my comparison.

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x Q. 196. The question is not what you found; I want to know with what books you actually compared defendant's book with a view to ascertaining the precise book upon which it was based or from which it was abridged? A. I have answered that there were at least six books.

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x Q. 197. Now, please name them? A. Well, in the first place, there was a Webster's New Illustrated—you mean with which I compared the new Webster's New Illustrated?

x Q. 198. Yes? A. I compared it with each book of Cupples & Leon which we had before us and Webster's New Century.

x Q. 199. And found them practically identical? A. Practially identical, and the book called the Saalfeld Reliable Webster, published by the Saalfeld Company, and I compared them with

Prof. Harry Thurston Peck—Cross.

6369

two books of which the exact titles have escaped me.

x Q. 200. Can you describe them? A. A. I can describe them; one by Mr. T. H. Russell. I don't know him. And another by Mr. Roe. I don't remember his initials, but you do, because you know him. Just as I compared it with Bond in the English book.

x Q. 201. Is there any other English book besides the one designated by the name of Bond with which you compared defendant's book? A. No. I was not looking at it for that purpose. 6370

x Q. 202. With what purpose were you looking at it? A. To see how it compared with the general run of small dictionaries. I must confess I have not had any great experience with small abridged editions, and I had to hunt up a great many dictionaries and study them pretty carefully and had them read to me and I compared this Webster's New Illustrated until I had formed an opinion, and I went over a great deal more on special points and special words and special classes of words and so on. Some of them, for example, went like this: They would leave out all the negatives because they say you can supply the negatives from the positives, and all such things as that. I wanted to find out how these books stood and what they were like. 6371

x Q. 203. The principal book with which you compared it was Webster's Dictionary of 1847; is that correct? A. That is quite correct, because it seems to me they all went back to that. 6372

x Q. 204. The purpose of your comparison and investigation was to determine the literary origin of this book, was it not? A. Yes.

6373

Prof. Harry Thurston Peck—Cross.

x Q. 205. And you began with Webster's 1847?
 A. I did not begin with Webster's 1847; I began with the small books. I noticed a great similarity all through. Then I thought to myself, what would they naturally go to if they went to a large unabridged lexicon, something that was not copyrighted at the present time, was out of copyright, and looking over the Webster's 1828 it seemed to me they had copied a good deal there, but when
 6374 I got to the 1847 it seemed as though they had copied more fluently, more volubly, more extensively, and so I settled on that, because in 1864 you can show a great many coincidences, but they are coincidences with the 1847, and so it brings you back to the 1847.

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x Q. 206. When you began this comparison did you know the purpose for which it was to be used? A. You mean the Webster's New Unabridged—you mean the Websterian?

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x Q. 207. When you began the comparison of Webster's New Standard Dictionary with other dictionaries did you know the purpose— A. (Interposing.) I knew it was the purpose of the Syndicate Publishing House to ask me in case my investigations and my reports were satisfactory. I did not know what they expected me to report. I made my investigation quite independently. I knew that they probably—in fact, I knew—that they intended to ask me to prepare a small dictionary to take the place of the one that they were using.

x Q. 208. Did you not know as a matter of fact that this comparison of the defendant's book with Webster's 1847 was desired for the purpose of showing that it was founded upon that book? A. No; I did not.

x Q. 209. You had no suspicion of that? A. Nothing was said to me about Webster 1847. I took some weeks, and did not even go down to the office of the Syndicate. I went up to my own library, where I had my own dictionaries, and did most of my comparison there. Sometimes I went over to the Columbia University Library for a rare book, and it took me a good deal of time. If they had told me that, it would have saved me a great deal of trouble.

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x Q. 210. After you got around to the Webster 1847 and made your comparison, did you then cease other search for the origin of defendant's book? A. Yes. It seemed to me convincing that that was the origin, because all the other books that I found post-dated Webster's 1847. It looked very much as though they had used the same material, and perhaps in some cases they had copied from one another or even used the same plates. That was not precisely what I had in mind. I had in mind the desire or intention of making a new small dictionary, and as to any controversies about the origin of these books, that was not the thing that came to me at all at first. It was to determine what sort of books were salable and were liked by the schools and children and young people in shops and offices and so forth, and I went through them all in that way, first comparing these to see how like they were to this or this was like them. There was no discussion of the source or the origin at all in my mind. That came to me afterwards when I noticed the same similarity that occurred between certain books.

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x Q. 211. You made an affidavit which was used upon the motion for preliminary injunction in

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Prof. Harry Thurston Peck—Cross.

this case, did you not? A. Yes. Of course I don't know about how it was used or when it was used and so forth. I made an affidavit. I don't know anything about anything else.

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x Q. 212. And in that affidavit you advocated the view that defendant's Webster's New Standard or Webster's New Illustrated Dictionary was based upon or abridged from Webster's Dictionary of 1847? A. I did. That is what I believed to be true, and what I still believe to be true, because I have not discovered any English book of earlier date that would make me think that it was the source.

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x Q. 213. The Mr. Roe whose dictionary you said you examined was the gentleman named on the title page of a dictionary published by the Chicago house of Laird & Lee; does that refresh your recollection? A. That refreshes it exactly. That is the man.

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x Q. 214. And was their dictionary also called Webster's New Standard Dictionary? A. The title I don't remember; it was called Webster's something or other.

x Q. 215. Was the Mr. Russell to whom you have referred the gentleman named upon the title page of the dictionary published by Saalfield? A. Yes, that was the one. I gave you the title of that I think, the Reliable Webster. That was a book smaller than anyone of these. That was one of the almost children's dictionaries, but very good. I have been told since that Mr. Russell has a reputation as a maker of lexicons, dictionaries and so forth.

x Q. 216. Are you acquainted with the reputation of Mr. Roe as a lexicographer? A. No, I don't say that. I don't know anything about

Prof. Harry Thurston Peck—Cross.

6385

Mr. Roe at all. He was a man who was a lexicographer.

x Q. 217. Do you know what lexicons he has compiled? A. Only the one that I saw.

x Q. 218. He has compiled no other famous authoritative work? A. Except that.

x Q. 219. Do you regard that as a famous authoritative work? A. I certainly should not say it was famous, but it is a book that has been very widely circulated and that is quite accurate.

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x Q. 220. Did Dr. Noah Webster insist upon the necessity of an American Dictionary as distinguished from an English Dictionary for use in this country? A. His title to his dictionary in 1828 showed that. That is "An American Dictionary of the English language." He held that the two nations had practically developed somewhat different varieties of the same speech, and for this country he made a different sort of lexicon. It is the same old thing Brander Matthews has been handling for a great number of years. Webster has in his introduction in 1828 one or two points there, one is that Americanisms, so called, he has included, though he finds that their source is usually the other side of the water. That was taken up long after by Richard Grant White, and it has been retaken up by Brander Matthews, but it was originally noted by Noah Webster, and the whole theory of that is that Webster held that the two languages had grown apart, because he says there were English words that sound like Lapland words to an American.

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x Q. 221. Was that one of the reasons alluded to by Webster as necessitating an American Dictionary as distinguished from an English Dictionary, the difference in the form of government,

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Prof. Harry Thurston Peck—Cross.

different laws, institutions, customs and the like?

A. Well, in so far as those differences would affect the vocabulary. In fact, that is what he says here, "he feels obliged to introduce information about England for the gentlemen of the law." Nobody else would know anything about it.

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x Q. 222. Did he not also refer to the necessity of difference in definitions in certain terms which were used differently in England than in this country? A. Yes.

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x Q. 223. I presume that would apply to ecclesiastical terms, very largely, would it not? A. Yes; that is perfectly true—very largely. He gives a great many ecclesiastical terms, but explains that they are English, and also law terms. We have had that. And terms that relate to land tenure, questions of feudal law, of remnants, of feudalism and also matters of rank. In other words, whole masses of words that we don't use in this country ourselves, although we may read them.

x Q. 224. Or in which we use them in a slightly different sense? A. We use them in a different sense, like "sheriff" for example, we say a sheriff is a very petty officer in a way; in England he is a great man.

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x Q. 225. You do not claim I presume that the new matter added to defendant's Webster's New Standard or New Illustrated Dictionary, and which was not contained and could not have been derived from the 1847 edition of Webster's Dictionary makes the defendant's book a Webster dictionary? A. Yes, it continues the Websterian tradition, because Webster is very radical, you might say, and very wise, and his advice has been

Prof. Harry Thurston Peck—Cross.

6393

followed by later lexicographers. That is, to put in the current common every-day words people want to use, not so much technicalities, and therefore the new words that have been added to what was perhaps nothing but 1847 Webster—that is, they got the residue, the back-bone of the 1847 Webster and filled it up with words that have come into the language since, either to represent new things, or because the meanings have been changed.

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x Q. 226. The opinion you have expressed then that defendant's book is properly termed a Webster's dictionary is in part based upon contents which were not taken from any Webster's dictionary? A. Oh, yes, but were taken because Webster would have taken them, because he advised taking such words and advised the use, say, of vulgar words. This book is not alone in that.

x Q. 227. I presume other American dictionaries do the same thing? A. Not to such an extent.

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x Q. 228. Did Webster's principles as you understand them include the requirements that the dictionary should be scholarly? A. Yes, certainly.

x Q. 229. What were the Webster requirement in respect to definitions? A. The most beautiful thing that he said was that definitions ought to define, or in other words the definition ought to be more simple than the thing it refers to.

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x Q. 230. The accuracy of the definition was of course a prime essential? A. Of course that was the first thing. Even if like Johnson, you made the definition more complex than the primary word, you should be accurate, and next you should be clear.

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Prof. Harry Thurston Peck—Cross.

6398

x Q. 231. In your opinion does the defendant's Webster New Standard dictionary conform to the requirement of accuracy and scholarship in respect to the information afforded? A. Yes. I should say that it is a defining dictionary. It is not an encyclopedic dictionary as Webster's was. When you make an encyclopedic dictionary you may spread yourself, and make things very clear, but these two books define and stop. They just crowd it down as close as possible, which is the reason why they contain a great many more words than the original Webster. As to the question of scholarship, as they are derived mostly from Webster, I should say they represent the same scale or standard of scholarship, or at least that the standard of scholarship is that of Webster, because they have taken it from Webster. The scholarship of the editor, I can't say anything about that, because I don't know. Webster could say a great deal more. In other words the definitions are Webster's definitions, and in a defining dictionary are essentially therefore as scholarly as his, being identical.

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x Q. 232. I presume scholarship has made great advances since Webster's day? A. Very great.

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x Q. 233. This dictionary purporting then to be published in the year 1911 is of the same grade of scholarship as prevailed in Noah Webster's day prior to 1843; is that what you mean to say? A. In respect to definitions. There is no question of etymology, you understand. It is an abridged book; it does not contain any etymology, where the greatest strides have been made, and Webster would not have had it so probably, and in definitions it has been altered from Webster, where the meaning has changed since Webster's time.

Prof. Harry Thurston Peck—Cross.

6401

x Q. 234. Is it your deliberate opinion that this book of the defendant's is a book of high scholarship and great accuracy? A. I don't think I can answer that yes or no. I would rather answer not categorically, if you will allow me, because I think I have answered it already. These two books represent precisely the standard of scholarship that Webster represented in 1847, and with the addition of a great many words to the vocabulary which do not involve as a rule questions of scholarship because there is no etymology in the book, but merely definitions. I don't think you bring in the question of scholarship much on the question of definitions. They take Webster's definitions. Take to-day the latest Webster you have, the New International, probably that has a great deal of matter or a great many definitions that were taken from Webster that go back ever so far. There is no reason for changing them. The definitions are just as good as they could be. The same way with these books. They have taken the best definitions that Webster gave. Now, when they came to new words, I think their definitions have been pretty good, quite as good as Stormonth's or Cassell's.

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x Q. 235. Do you know of any instance in this book where English definitions have been given in preference to American definitions of the same word? A. In the case of military terms, I have noticed such; I would not be able to give an example because it may have been changed; but military and naval terms are sometimes English for the reason that they were English in this country until the Civil War perhaps, or after.

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x Q. 236. How were they in Webster's 1847? A. They were, as it were, English there except in

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Prof. Harry Thurston Peck—Cross.

some cases where he gives it as English and changes, but in our army and navy the changes of vocabulary, the vocabulary of the art of war, remain pretty close to the English. I don't think until the Civil War, and even after, they have changed, even in the last few months some things, or in the last year or two, like changing midshipmen and cadets and so forth. There are some English definitions there.

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x Q. 237. Are there instances in the book of defendant's where English definitions are given instead of the American definitions given by the Webster's 1847 edition? A. Not to my knowledge.

x Q. 238. Are there any ecclesiastical terms defined in this book in accordance with the English definition instead of the American definition of Webster's 1847? A. Yes.

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x Q. 239. Are there any other classes of English definitions? A. I think it would be fair to let me explain that.

x Q. 240. You may explain? A. I say, yes, there are such instances, but the fault lies in not labelling them as specifically English, because we still read our Anthony Trollope's ecclesiastical English novels. That would come under Webster's head.

6408

x Q. 241. Are there any instances where the English definition is thus given and the American definition as contained in Webster's 1847 edition is not given or no American definition is given? A. Not to my knowledge.

x Q. 242. To the extent that this book gives English forms of spelling and English forms of definitions and omits the American forms given and advocated by Webster, you would not say this

book was Websterian? A. Yes, I would, because Webster himself says in one of his sixteen points that he has given a great many words that are locally English, or local in England, and quite unintelligible in this country, as much so as Lapland words, except to those people who read English books; so I think any word that is not very technical, any word you hear in conversation in England, and that is, a word used there, would be given here in any one of our dictionaries, and that is what Webster means. He says, "I have given words that are local in England, because some people in this country have read those books containing them," and for that reason it would not interfere with its Websterianism; it would be in fact one of the precepts of Webster.

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x Q. 243. You say it would be one of the precepts of Webster to give the English definition of a word and omit the American definition of the same word which was given in Webster? A. No, I did not say that.

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x Q. 244. That was the question? A. The question was, I thought, was it consistent with Websterianism to insert English words with the English meaning.

x Q. 245. No, that was not the question. I will repeat the question. To the extent that this book gives English forms of spelling and English forms of definition and does not give the accepted American forms of spelling and American forms of definition of those same words, which forms of spelling and forms of definitions are contained in and advocated by Webster's dictionary of the edition of 1847—now, to the extent that this book does that, would you term it Websterian? A. No.

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Prof. Harry Thurston Peck—Cross.

MR. CARROLL: I object to this question on the ground that it has not been shown that in a single instance words have been given English definitions and the American definition of the same word has been omitted; in fact, this witness has distinctly said that he does not remember any such instances.

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MR. HALE: The question is directed to ascertaining the full meaning of the word "Websterian" as used by this witness in testifying that the defendant's dictionary involved in this case is properly described by the term "Websterian" or "Webster's," which the witness says he uses synonymously.

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x Q. 246. So far as Webster differs from Johnson in his spelling and definitions does defendant's book follow Webster or Johnson? A. Webster.

x Q. 247. Invariably? A. As I say, invariably, yes, unless there may be three or four possible exceptions which I have not noted.

x Q. 248. So far as it follows Johnson if at all you would not call it Websterian then? A. Why, no. That is, if it were absolutely unlike Webster, it would not be Websterian. I am willing to admit that.

6416

x Q. 249. I presume it is generally admitted in the light of recent scholarship that Noah Webster's etymologies were substantially all wrong? A. Yes, they were practically all wrong, even when you come down to the Merriam Webster of 1864; even though Hadley had charge of it, and was a very accomplished scholar; they had not yet made the discovery of the two great things which revolutionized etymology; one was Verner's Law,

Prof. Harry Thurston Peck—Cross.

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which explained the exception's to Grimm's Law, which nobody had been able to explain, and second, the dissertations and discoveries on nasal consonants by Professor Brugmann.

x Q. 250. Have you made any comparison of defendant's books with other dictionaries with a view to ascertaining the source and origin of defendant's book since making your affidavit which has been referred to? A. I looked in Richardson, 1836.

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x Q. 251. Was that an English or an American edition? A. That is an American book, but I did not find anything there that helped me any. I had really made up my mind and I did not find any other books on sale or in use anywhere. Every time I saw a small dictionary, I bought it.

x Q. 252. Did you make any further comparison of defendant's book with the Webster's dictionary of 1847 since making that affidavit? A. Not with reference to that book, no. The affidavit was made and sworn to and I had nothing to add because I had really spent a great deal of time on it.

6419

x Q. 253. You have stated that you prefer the term "Websterian" to the term "Webster's" as descriptive of the defendant's dictionary. Why? A. Well, largely for a reason that is not very cogent. It is because I prefer an adjective to a noun. It is more euphonious. As I said this morning, I would say "Wagnerian" rather than "Wagner's" and I would say "Byronic" rather than "Byron's" and I would say "Tolstoian" rather than "Tolstoi's," and so on. I think the adjective is the better word, the neater word, than the other title.

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x Q. 254. Any other reason? A. No other reason.

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Prof. Harry Thurston Peck—Cross.

x Q. 255. Do you think it more accurately descriptive of the literary contents of the book? A. Why, I think possibly any one would say it for that reason. It is a descriptive word, whereas "Webster's" is not so descriptive a word.

x Q. 256. You have also stated that the word "Webster's" comprehends most dictionaries with the multitude? A. Yes.

6422

x Q. 257. And that the phrase "Give me a Webster's dictionary" means no more than "Give me a dictionary"? A. Well, I think people generally say—

x Q. 258. Wait a minute, until I put the question. What is the reason for that statement? A. Well, I think I said, "Give me a Webster's" is the phrase,—that Webster has got to mean a dictionary nowadays with most people.

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x Q. 259. How and why? A. Because it has been so largely advertised as a dictionary in general use and it is therefore more before the public mind and among teachers and so on, whereas they may be actually using the new standard or the old standard or some other abridgement, Worcester—I think Webster really means to the public mind a dictionary, but when you say "Give me a Webster's dictionary" I presume the clerk would bring you out any dictionary that was called "Webster's dictionary"; he would not differentiate between one or another; he would bring out all he had.

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He would bring out two or three dictionaries. He would not discriminate in your favor, I mean in favor of the Merriams, unless of course he knew his customer and thought he would like to sell a ten or twelve dollar book.

Prof. Harry Thurston Peck—Cross.

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MR. HALE: So much of the answer as begins with the phrase "whereas they may be actually" and so forth is objected to as not responsive and as a volunteered statement of the witness not based upon any facts of which he has been shown to have knowledge, and motion is made to strike it out as a mere conclusion and as not responsive.

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x Q. 261. You have stated that the defendant's dictionary follows fifteen out of the sixteen principles of Noah Webster which you have enumerated. Do you wish that answer to stand without any qualifications.

MR. CARROLL: Objected to inasmuch as the witness has already qualified that statement, and inasmuch as his testimony on direct examination fully answered his whole position in that regard.

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A. No, I don't care to qualify it for the reason that as Mr. Carroll says I made a qualification before.

x Q. 262. What was that qualification?

MR. CARROLL: Objected to as the record speaks for itself.

MR. HALE: This is cross examination.

THE WITNESS: That was not what I meant; I made one qualification about etymology, that the small book did not have etymology. Webster probably did not express it, so it came down to fifteen points in an abridged, and then I made another semi-qualification with regards to military terms and so forth. You have that down on the

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Prof. Harry Thurston Peck—Cross.

record. But I have no other qualification to make, and I think those were sufficient at the time.

x Q. 263. And your opinion that the book is properly called "Websterian" or "Webster's" is based upon the assumption that the book in truth does follow fifteen out of sixteen principles with the qualifications which you have stated? A. Yes.

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x Q. 264. Do you mean to assert as a result of your investigations that there are any words or definitions which were actually copied or abridged from the 1847 edition of Webster's dictionary? A. Do I assert that there were actually copied—

x Q. 265. Or abridged? A. Yes; that no person with a fair open mind could read the continual repetition which you find in here of the Webster 1847, paragraph after paragraph and page after page, without being absolutely sure that it came from the Webster's 1847.

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x Q. 266. You base your opinion upon the identities and similarities which you found by your comparison? A. Found in all these books by my comparison, yes.

x Q. 267. And of course that is said on the basis of that comparison? A. I have not been able to find and nobody has been able to find and anybody who could give any evidence or any opinion, who could be expected to have any knowledge of any other source than the 1847 Webster.

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x Q. 268. Do you mean to assert that the compiler of the defendant's dictionary, whoever he may be, had before him at the time he was preparing the dictionary, the 1847 edition of Webster's? A. I don't mean to assert it; I mean to say that the circumstantial evidence is so very

Prof. Harry Thurston Peck—Cross.

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strong that in default of other testimony one would have to accept that.

x Q. 269. In other words you express the opinion that that fact is true based upon your comparison and investigation? A. I express it very strongly, yes. I don't go any further than that, because it is conceivable, of course, that you had another source, that somebody else compiled it from Webster, but that it came from Webster is absolutely certain in my mind. I would be willing to assert that and swear to that. It is a demonstration. It is like two and two are four.

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x Q. 270. If it should be shown that the book more nearly conformed to some other dictionary than 1847 and contained vastly more identity and similarity with this other dictionary than it does with the 1847 edition of Webster's dictionary, would that affect your opinion in any degree? A. It is a matter I should want to consider after seeing the testimony, reading the book in question, because someone might take the books under discussion and go back to the '47 and make it more Websterian than it is; that would be possible. It would prove that it was not directly from the Webster 1847. You only change the time. Now, you could make up, if you wanted to, you could send somebody or get somebody from a set of people, compilers to make a new dictionary out of the 1847 which would be so close to it that it would be the same thing almost, then you would bring it to me and say, "Well, now, doesn't this show this was the original source of these books," although it was really made perhaps yesterday or printed yesterday, come off the press yesterday. Of course I would not say so. I would say, this is nearer, this is more Websterian. It may be

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Prof. Harry Thurston Peck—Cross.

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older than these books we have, but that would have to be proved. I think anybody interested very much in this question and willing to spend a good sum of money about it, might do that very thing, might compose and invent out of the 1847 Webster, a dictionary which would be much more close to that 1847 edition and that would also have a large supply of modern words. That is, make it over. I can conceive of such a thing as that. So, if you ask me if anybody brought me a book of that kind at first glance, I look at it and say it is more Websterian probably; I would not necessarily say that these books came from it. I would say that it might have been made for the very purpose of refuting and getting me to say that thing. I should want to know when it was printed and where it was printed, and I should want to have all the documents and data in the case, because I would stake my reputation on the source of these two books, and I would not like to give my opinion, which is not lightly arrived at, without a chance to know what this new monster was, whether it was a book older than these or something that was made within the last six months.

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x Q. 271. Your opinion though is based solely upon the identities and similarities and the number of them which you found by this comparison?
A. Yes.

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x Q. 272. Is this Exhibit C which consists of marked and pasted sheets taken from the dictionaries compared a perfectly fair sample of what you found in your comparison? A. Absolutely so. I would be willing to let you choose any given number taken at random and let me mark them.

x Q. 273. And you found nothing which would make a better showing for the defendant than

Prof. Harry Thurston Peck—Cross.

6441

those pages? A. No, I could not ask anything better than that.

x Q. 274. You are willing to risk your opinion upon the identities and similarities pointed out by the markings on those pages? A. Yes. I did not go through the whole book examining the pages, to see which ones contained the greater number of similarities, and likenesses. I took any number just as I came to them and examined them afterwards and used them. I went over and read a great many other pages, however, having someone to read to me and let me examine, and I found it all ran about the same.

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x Q. 275. In your summary statement of the so called sixteen principles of dictionary making, by Noah Webster, you have referred to his principles governing orthography or spelling simply as follows: "In the orthography of certain classes of words, I have aimed at uniformity, but I have not proceeded so far as my own wishes might dictate." Did Noah Webster explain his ideas and practise as to orthography in the introduction to his dictionary, and I call your attention to pages LVII to LX inclusive in Webster's Introduction, which has been offered in evidence as Complainant's Exhibit B, with Harry Thurston Peck's affidavit? A. Yes. All that I should be quite willing to take up with anybody, but I think the answer would be "yes."

6443

x Q. 276. Is the statement there made in Noah Webster's introduction an accurate statement of the principles governing the spelling in Webster's dictionary of 1828 and 1847? A. Why, they are accurate, yes, so far as representing his view is concerned; I don't say all his discussion there is accurate. They represent what he thought; they are Websterian.

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Prof. Harry Thurston Peck—Cross.

x Q. 277. In other words, they represent the Websterian theory of spelling? A. Yes.

x Q. 278. And in the numbered paragraphs in that portion of his introduction he has grouped various classes of words and expressed definite ideas as to the proper manner in which those words should be spelled in a dictionary?

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MR. CARROLL: I object to all this line of testimony on the ground that the exhibit speaks for itself, and counsel for complainant is obviously trying to use this witness to erect sign posts through the printed exhibit.

A. Well, when you ask me is this accurate—did you say?

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x Q. 279. Read the question. (Question read). In other words, has indicated the Websterian method of spelling those words? A. I am absolutely at variance myself personally. I am not with Webster at all. I think he has outraged the language, but he has indicated here—

x Q. 280. I am not asking you to sanction it? A. I know, but you rather put it in that way, whether I would consider it correct.

6448

x Q. 281. I want to know whether it is Websterian; that is all? A. Oh, yes, Websterian. There is something I might add to that, in the case of a word derived from a foreign language, one has his choice always of copying the original pronunciation or the foreign pronunciation, because he considers it has not yet been Anglicized or by using the Anglicized pronunciation, there is that question which Websterians might differ about, as to whether who is right.

Prof. Harry Thurston Peck—Cross.

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x Q. 282. So far as Webster's spelling has persisted and become now the standard form and good usage in this country, does defendant's book adopt and follow it? A. Yes, deriving it, however, not from Webster's lexicons and the dictionary, but from spelling books as other people have; that is to say there is an intimation that Webster's dictionary has affected the whole orthographic system of the country. Now, I say Webster's spelling books do. I am willing to admit that, and I am willing to admit that the defendant's book in following it follows Webster, but not Webster's dictionary; I mean, not because of Webster's dictionary. I think that is a negligible factor.

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x Q. 283. So far as defendant's book varies from Webster's form of spelling, which form has persisted to this day and become good American usage, would you term defendant's book Websterian or Webster's?

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MR. CARROLL: I object to that on the ground it has not been shown defendant's book differs in any way from the original Webster in spelling.

MR. HALE: Both books have been offered in evidence, so it has been shown precisely to what extent defendant's form of spelling differs from Webster's form.

MR. CARROLL: If it does differ that will appear, but it has not been shown that there is any difference.

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A. A large variation from Webster or a great many variations from Webster would limit and diminish its Websterianism in any one of these two books we are discussing; an occasional varia-

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Prof. Harry Thurston Peck—Cross.

tion I should say would be negligible. That does not count. I should say it counted no more than any misprint, or minor error. I don't think it gives any ground to draw upon. You must deal with large things in a large way. If you find the book to be quite inconsistent with Webster, it is not Websterian. If you find it is ninety per cent. Websterian, it is Websterian. Now, I am willing to grant you the other ten or five per cent or whatever it is, but then that does not affect the whole book. You would apparently say here if there is just one word that is not spelled according to Webster, to that extent I say that would not affect the Websterianism of the book. It is not big enough.

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x Q. 284. Such variations, however many there may be, are not, however, Websterian in your sense of that term? A. No, as they are not Webster's usage they are not Websterian.

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x Q. 285. I suppose the Standard dictionary and the Century dictionary also spell words in accordance with present usage which has persisted from the time Webster introduced the form of spelling; is that correct? A. Different from Webster; that is, Webster is not so radical as the editors of the Standard and the Century. While they are as radical as he is, he is not as radical as they are.

6456

x Q. 286. You do not deny that the Century dictionary and the Standard dictionaries and other modern American dictionaries spell words in accordance with the Websterian approved form which has persisted and become present day good usage, do you? A. That is to say they have accepted so much of Webster's innovations as the country accepted, yes.

Prof. Harry Thurston Peck—Cross.

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x 287. Does that make those books Websterian in your sense of the term? A. No, only as you would say to the extent that they have done in that in that small point, in that point at any rate they have been Websterian, but it does not follow,—there may be a thousand other things that overwhelm that and make it of no consequence, and as a matter of fact, we don't know how far Webster would have liked to go. He says he would like to have gone further, but whether he would have gone as far as the Century dictionary or Standard we cannot tell. All we derive from your question is that to a certain extent they are Websterian.

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x Q. 288. Are you using the Websterian in a broader sense than according to the principles and practise as exemplified in the 1847 edition of Webster's dictionary? A. Well, I was using it more—I was going back to the fountain head, the original Webster of 1828.

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x Q. 289. In your view then, anything that you deem Webster would have done in accordance with the principles you have stated is to-day Websterian and authorized anyone to call a dictionary Websterian? A. No, not at all. I don't go upon the basis of what he might have thought or might have said or might have done, but only what he said might be done and what he authorized to be done, and what he himself did in his later editions.

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x Q. 290. And you don't limit it to what he actually did in the 1847 edition? A. Well, in the first place, for example, I would put in a great many new words that he never heard of, representing things he had never heard of, but that is according to one of his rules where he says new

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Prof. Harry Thurston Peck—Cross.

6462

words for new things; that is Websterian because he says that in so many words, but if you say because he spelled as he did, that is, he broke with the authorized English spelling, therefore you may also break a great many other rules, and depart still more from standard English than I say they had not any authority for that in Webster. Therefore the Standard dictionary to my mind and the Century dictionary to my mind are not Websterian in the changes they have made, they have gone beyond the wise conservatism of Webster. Webster stopped at what he thought was just and wise and suitable, and he did not let his own personal preference guide him in this matter. He says, "I should like to go further, but I think it best not to." And that is just what I would say.

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x Q. 291. In your direct testimony you have said that certain definitions in this book which you compared with the 1847 edition of Webster's dictionary were abridged from the definitions in Webster's 1847 edition. What precisely did you mean by the word "abridged?" A. I meant where you had a paragraph of some five sentences—I can give you an example if you will let me have that book.

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x Q. 292. Please explain your meaning first and then illustrate by example afterwards? A. Well, I should say if you have a paragraph of four or five sentences, containing certain marked leading words, that are condensed by the editor of one of these books into a single sentence, or at any rate something much less in length than the paragraph, containing, however, those leading words. I will show you if I can find you an instance.

Prof. Harry Thurston Peck—Cross.

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x Q. 293. Do you mean giving also the sense of the original definition? A. Yes. That is the upright line at the side.

x Q. 294. Before you give the illustration let us clear it up, and you can illustrate both at once. And you have also used the word "paraphrase." What precisely did you mean by the word "paraphrase" in that testimony? A. I meant by that the expression of the same thought, and not a common usage of that, in very much less words than were used in the original 1847 book.

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x Q. 295. Both the words "paraphrase" and "abridge" as used by you then to imply that there was an original? A. Yes, the difference between the two being that in a paraphrase there is no verbal similarity but a very close similarity in thought in a separate paragraph by itself; whereas the other word that I used which was "abridged," there the words are taken from the original and a shorter sentence or a shorter paragraph is made out of the very words.

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x Q. 296. And in your markings of this Exhibit C, instances of this use of the term "paraphrase" and the term "abridged" is indicated by a blue upright mark in the margin of the exhibit? A. Yes. I ought to say, let me add, probably very often the paragraph in Webster will consist of a number of synonyms strung along together. Now, it may be to the extent of fifteen lines. The man who abridged it, the editor, goes over that and throws out about half, because he thinks he has got enough, and saves that much space. Then he sometimes changes the synonym for another word.

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x Q. 297. Have you in the exhibit— A. This was an example. This was the kind I just men-

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Prof. Harry Thurston Peck—Cross.

tioned where it is lengthy and not a consecutive sentence, but it is sort of a paragraph. There a number of descriptive words are heaped up together. Under that word "action" you will find everything in blue is found precisely in "action" in Webster of 1847.

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x Q. 298. In this Exhibit C are there any instances which you have marked with the upright blue line in the margin which is not an instance of abridgement or paraphrase of matter in the 1847 edition of Webster's dictionary with which you say you have compared it? A. No, I think I may safely say not.

x Q. 299. Did you do this work personally? A. Yes.

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x Q. 300. Is this marking your own? A. I marked them. However, I would say it was revised and gone over again by the person who pasted it to see that it was right, but they are supposed to be a copy of mine. I wanted a nice looking sheet.

6472

x Q. 301. If there is any sense of a term given in the defendant's dictionary, which is not given in the 1847 edition of Webster's dictionary, you would not say that the defendant's definition giving that sense was copied, abridged, or paraphrased from Webster's 1847 edition? A. Yes, it might, for this reason: You will find in my affidavit there, sometimes the editor of one of these books or both of them, instead of giving under a certain title the definition of the Webster 1847 gives a part of the definition of the Webster 1847 and supplemented it with something a little up or a little below the word that was practically synonymous. That is, he mingled, say, one word Webster has given two sets of definitions. This

Prof. Harry Thurston Peck—Cross.

6473

editor has and did in many cases take out a part of each of "Webster's," and put them together.

x Q. 302. But in every instance, the sense was found in Webster's 1847 edition? A. Yes, such is my belief.

x Q. 303. Are there any cases of sense given in Webster's 1847 edition which you have marked as a paraphrase or an abridgement by means of a vertical blue mark in the margin which is not contained at all in the corresponding definition in the defendant's book? A. That could be accounted for only on the basis of a slip of the pencil or something of that sort. There might be one or two cases. We are all human. I would say no, no is the answer; it would not be invalidated by the occurrence of one or two such things.

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x Q. 304. In Defendant's Exhibit C, to your affidavit, I notice you have marked with a vertical blue line in the margin the entire definition of the word "adhesion" as contained in Webster's dictionary of 1847. I find that definition to consist of four paragraphs giving different meanings of the term in addition to the meaning, "the act or state of sticking." In defendant's dictionary as shown by this same exhibit I find that the word "adhesion" is defined simply as "the state or act of adhering." I show you the exhibit. How do you defend marking the Webster definition as showing a paraphrase or abridgement? A. No, Mr. Hale, that is not to be defended at all; that is an absolute slip of the pencil, because what follows is not "Webster's" even, it is only a translation.

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x Q. 305. That particular marking indicating an abridgement or paraphrase should therefore be corrected and omitted? A. Corrected and omitted.

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Prof. Harry Thurston Peck—Cross.

x Q. 306. And the full extent of the similarity or identity is the underscored phrase "the act or state of sticking"? A. Yes.

x Q. 307. I call your attention to the next word—

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MR. CARROLL: I object to all this line of testimony on the ground that the exhibit itself speaks for itself and that all the particular attentions which are being called are quite immaterial and irrelevant and the Court can discover for itself whether or not the markings are correct.

MR. HALE: The question goes to the good faith and accuracy of the marking of this exhibit which has been presented to the Court as reliable.

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If accident or other reason has rendered the same unreliable, complainant is entitled to show it by this witness, especially as he has based his testimony that defendant's dictionary is properly called a Webster's dictionary upon this exhibit.

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x Q. 308. I call your attention to the next word in Webster's 1847 edition, which is the word "adhesive," and which definition contains four paragraphs, all of which have been marked with a vertical line indicating that they have been abridged or paraphrased in defendant's dictionary with which you compare them. I find the word "adhesive" defined in defendant's dictionary simply as "holding fast"; "gummed for use"; "sticky," with no other meanings given. How do you defend marking all of the meanings given by Webster as having been paraphrased or abridged and carried into defendant's dictionary? A. Well, I

should say that this came under the head of what I mentioned a while ago. There are three things denoted by the upright line; one is that the under line shows that the words are absolutely taken from Webster. Then I told you that the upright line stood for a paraphrase or condensation, but that sometimes the editor went afield a little and took in neighboring words, as giving him the general ideas that are expressed in Webster, only different titles, titles that are very near or derived from the same verb. I can account for it only in that way. "Adhesive" alone as "holding fast, gummed for use, sticky," but Webster has put in there quite a number of other meanings which are essentially the same, however, and this is therefore an abridgement. That is, Webster has made a whole paragraph and this editor has made two lines. That is what I should call abridgement.

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x Q. 309. In your opinion the marking of this word "adhesive" in the Webster 1847 edition as a paraphrase or abridgment may be defended? A. It may be defended, yes, on the ground that it is a condensation of several things in Webster.

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x Q. 310. In this definition of adhesive in Webster I note a meaning given as follows: "Adhesive plaster, in medicine, sticking plaster, used especially for uniting the lips of wounds." Please point out that meaning in defendant's dictionary, showing where an abridgment of that meaning is contained? A. You must remember that Webster does not give there a title; he gives there an adjective and a noun or a participle and a noun; otherwise you might have a whole sentence and then explain what it meant; but what troubles you is about the united parts of a wound; is that it?

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Prof. Harry Thurston Peck—Cross.

x Q. 311. I want to find an abridgement of the language quoted. You have marked this as such and have asserted that defendant's dictionary contained an abridgement of that language. Please point it out? A. Well, I think "holding fast, gummed for use," there is not anything here that has to do with plaster. Webster puts in the adhesive plaster, not as a regular title, but he puts it in small type underneath.

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x Q. 312. Yes, and you have marked that language as an abridgement? A. Yes, that is an abridgement.

x Q. 313. Now, show where it is in defendant's book, please show us; justify that marking?

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MR. CARROLL: I object to this examination on the ground that this witness has already testified that a large part of Webster's work was what might be called encyclopedic which was necessarily omitted in an abridged dictionary.

MR. HALE: Complainant's counsel responds that that does not justify false marking, the marking of an exhibit intended to show that matter was in Webster's and abridged and paraphrased and inserted in defendant's book, of which this is a fair sample.

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MR. CARROLL: Counsel for defendant is willing to stand upon the exhibit and requests the Court to particularly look at it and it will appear upon its face whether counsel for complainant's absurd accusations are correct or not.

MR. HALE: If not false markings, which may be offensive and which I withdraw as

Prof. Harry Thurston Peck—Cross.

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unintentional, I mean incorrect and unreliable markings, which I will substitute.

THE WITNESS: No, I don't think it is unreliable marking. The marking here in the first place extends over more than one definition, if you notice.

x Q. 314. Doesn't that mean that all the matter to which the marking extends is abridged or paraphrased? A. There are five words here relating to adhesion and different kinds of adhesion and so forth. Webster puts in the encyclopedic paragraph, adhesive plaster. That is *aliunde* however, and when giving an upright mark one does not expect there to find the close actual repetition of words but the general idea which enters into the words of the other book. Now, that was put in and evidently marked here to cover the matter of adherence. Of course everybody knows what a plaster is. Now, adhesive is "holding fast," gummed for use, "sticky," and we have also marked "adhering" put adhering in, and sticky; that is anything which adheres, "follower of a party or leader"; all those things are vital and they are all essential because they cover the Webster definitions. Now, they represent paraphrases and condensations. I stand by that marking.

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x Q. 315. I repeat my last question. Does not the vertical blue mark in the margin indicate that all matter comprehended by it has been paraphrased or abridged and inserted in defendant's dictionary? A. Paraphrased or abridged or taken from some other article or title in Webster very near to that of the same character and same general meaning.

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x Q. 316. I am talking now specifically about the markings in the Webster? A. Well,—

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Prof. Harry Thurston Peck—Cross.

x Q. 317. Does a vertical blue marking in the portion of this exhibit containing pages from Webster's dictionary of 1847 indicate that matter comprehended by that marking has been paraphrased or abridged and inserted in the paraphrased or abridged form in defendant's dictionary? A. No, not all of it, no; we don't claim that.

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x Q. 318. What does that marking mean then? A. The marking means that that paragraph in Webster or those little paragraphs are the source of those definitions in the two books in question.

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x Q. 319. You wish to modify and change your testimony then as to what this marking means? A. Well, I say it means one of the three things that I said. I forgot the third point. You will find it in my affidavit, however. Very often we will find that Webster has spread himself; that is to say, that Webster has put under three heads what we put under one.

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x Q. 320. I ask you now to point out under any head in your dictionary an abridgment or paraphrase of the language which you have marked in Webster's dictionary under the word "adhesive" and which I quoted to you? A. Well, the very words, the ones you show me—well, that is an exception; Webster's is an extension of the rest. We find that Webster has used or we have used the exact words that Webster has there, in the first place; Webster has gone on in his encyclopedic paragraph down below in small type and shown various ways in which these words are used. We want to call attention to that fact, that our book is not encyclopedic. If you give all the definitions that cover Webster's encyclopedic paragraph—

Prof. Harry Thurston Peck—Cross.

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x Q. 321. You cannot then point out in defendant's book any paraphrase or abridgment or the sense of the quotation which I have made from Webster's dictionary, and which you have marked as having been paraphrased and abridged?

MR. CARROLL: I object to this repetition of the same question over and over again on the ground that the witness has already testified that the meaning of the word "adhesive" which is exemplified by Webster's encyclopedic phrase "adhesive plaster" is included in the definition given in our book; that is to say, any one reading our book and reading the Webster paragraph would understand what an adhesive plaster was.

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x Q. 322. Do you think that fair marking to mark the definition of adhesive plaster or adhesive inflammation, adhesive slate, which you have marked under the word "adhesive" as having been paraphrased or abridged? A. The point is, what is adhesive? Webster gives a number of definitions, and they are definitions that correspond almost word for word with what is in our books. Below he gives "adhesive plaster" and he gives "adhesive slate," and so forth, and they are all thoroughly explained, they are abridged; that is an abridgment to show that we give the sense of Webster's paragraph in our paragraph in a few words. Now, he might have said "Adhesive" a thousand things, and it would all go under the same head. After all, what is adhesive?

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x Q. 323. And you having used the single word "sticky" which is contained in Webster, you mark all the other thousand words there as an abridgment, and you would deem that fair marking; is

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Prof. Harry Thurston Peck—Cross.

that correct? A. Well, we have other words there that don't come from Webster. That much of a coincidence is not very important.

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x Q. 324. Do you still insist then that all of the language comprehended by the vertical blue mark in the margin of the word "adhesive" and its definitions and illustrations as it appears in Webster's dictionary of 1847 is properly marked as having been abridged or paraphrased and inserted in defendant's dictionary? A. Yes.

x Q. 325. And are the other vertical marks in this exhibit prepared upon your same theory? A. Prepared on the same theory, on the theory that the Webster has either—prepared on the theory that this has been abridged or paraphrased from Webster or from not necessarily the same title, but from a title nearby and relating to the same thing.

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x Q. 326. You have marked this particular matter as having been paraphrased or abridged, and I ask you again definitely and particularly to point out what you deem an abridgment of the three definitions given in Webster?

MR. CARROLL: Again I object, and I direct the witness no longer to answer this line of irrelevant testimony, which has been many times answered.

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MR. HALE: Complainant is trying to obtain a fair and frank answer to a fair and frank question, which admits of an answer yes or no, or at least of a definite pointing out, if such a thing can be done.

MR. CARROLL: Defendant's counsel is satisfied to stand on the answers as they have been given.

Prof. Harry Thurston Peck—Cross.

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MR. HALE: Will you please answer the question?

MR. CARROLL: No, I direct him not to.

MR. HALE: Complainant's counsel excepts to the direction to the witness not to answer the question, and to the refusal of the witness to answer the question, and requests the Examiner to certify the same to the Court for a ruling as to the propriety of the question and the sufficiency of the witness' answer, and as to his duty to answer this question and this line of questions.

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MR. CARROLL: The general objection is made to this line of questions, that in each instance the exhibit speaks for itself. The particular question which has not been answered, remains unanswered at this third reappearance, for the reason that it has been already multifariously answered.

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x Q. 327. Under the word "acute" in Webster's dictionary of 1847 as contained in your marked exhibit, I find seven numbered paragraphs giving seven meanings and applications of the term, the first six of which you have marked by a vertical line, as having been abridged or paraphrased and inserted in defendant's dictionary. Among these meanings I discover a geometrical meaning as follows: "An acute angle in geometry is one which is less than a right angle, or which subtends less than ninety degrees; an acute angle triangle is one whose three angles are all acute or less than ninety degrees each; an acute angle cone is one the angle at the vertex of which is acute." I also find a meaning numbered 5 in the Webster dic-

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Prof. Harry Thurston Peck—Cross.

tionary, "An acute accent is that which elevates or sharpens the voice." You have marked those definitions as having been paraphrased or abridged. The entire definition under "acute" in this dictionary is as follows: "Sharp pointed; intellectually sharp; quick of perception; severe, as pain or symptoms attending a disease; high in pitch, shrill." What part of defendant's dictionary there do you deem a paraphrase or abridgment of the two definitions and meanings quoted from Webster's dictionary which you have marked as having been abridged?

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MR. CARROLL: I object to this question on the ground it has already been testified by this witness that in an abridged dictionary it is necessary to omit encyclopedic matter, and that it is also well to omit technical definitions. It is apparent that the matter referred to by counsel for complainant clearly comes within these two heads, that therefore the question has already been fully answered by this witness, and further more the exhibit speaks for itself.

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MR. HALE: Does defendant's counsel mean to say that the meanings quoted from Webster's dictionary were omitted in accordance with that theory from defendant's dictionary?

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MR. CARROLL: Defendant's counsel does not know why the matter spoken of by complainant's counsel or such parts of it as appear to be omitted were omitted, but it appears to him, as it will appear to any sensible and reasonable man, that the definition in the dictionary of the defendant is quite adequate in an abridged dictionary,

Prof. Harry Thurston Peck—Cross.

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and contains practically all of the definitions of the word "acute" which are given or exemplified in the unabridged Webster.

MR. HALE: An omission cannot fairly or honestly be marked as an abridgement or a paraphrase, especially as this witness has testified that his meanings of the words "abridgement" and "paraphrased" implies that the sense of the definition is preserved.

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THE WITNESS: You harp upon two points.

x Q. 328. I am only harping upon the question of the marks? A. There are three things allowed; one is paraphrasing and one abridging. Now, I said there was a third point. Very often Webster would put under two or three heads that which in the abridgement is contained under one or vice versa. At any rate these things are illustrative rather than definitive.

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x Q. 329. That does not answer or explain this marking, because here Webster has placed under one head the matter quoted, you have marked it in your exhibit as having been paraphrased or abridged by defendant—A. (Interposing) Or transferred—

x Q. 330. I ask you please to point out where in defendant's book, an abridgement, paraphrase or transfer of the matter quoted may be found so as to justify the marking?

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MR. CARROLL: I again object to this line of examination as purely and obviously argumentative and an attempt to argue the witness out of a sensible and sound position.

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Prof. Harry Thurston Peck—Cross.

MR. HALE: The marking is utterly unfair and unreliable and I propose to show it.

MR. CARROLL: If the marking is of the character spoken of by complainant's counsel, it will appear so to the reasonable sensible and acute Court. Defendant's counsel again is ready to stand upon the exhibit as it appears.

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THE WITNESS: Here are seven definitions in Webster. Out of them all, for example, we have figuratively—

MR. HALE: I object to the line on which the witness has started as utterly irresponsible to the question.

THE WITNESS: No, it is not irresponsible to the question.

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MR. HALE: I have asked him to point out where the matter quoted may be found, and I am willing to let the marking stand for the other meanings of the word.

x Q. 331. Please answer the question responsively. (Question repeated) I ask you please to point out where in defendant's book an abridgement, paraphrase or transfer of the matter quoted may be found so as to justify the marking? A. In the first place, I think one was here, you say, "An acute disease." What were the two you objected to?

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x Q. 332. The geometrical definitions, and the definition of "acute accent" as found in Webster. Please point out what you deem a paraphrase of any of those definitions in defendant's book? A. An acute accent is high in pitch. That is taken from Webster's longer definition. It does not say anything here about music, but "high in pitch"

Prof. Harry Thurston Peck—Cross.

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is perfectly clear; shrill adds to it. What was the next you pointed out?

x Q. 333. "An acute angle?" A. Don't you think "sharp pointed" represents an acute angle.. And "intellectually" it says—

x Q. 334. That part was not in question. You deem then that the single phrase "sharp pointed" which appears in defendant's dictionary is an abridgement of the following matter which appears in Webster's dictionary and which you have marked as an abridgement or paraphrase, to wit, "An acute angle in geometry is one which is less than a right angle, or which subtends less than ninety degrees; an acute angle triangle is one whose three angles are all acute or less than ninety degrees each; an acute angle cone, is one the angle at the vertex of which is acute?" A. That is they are all sharp pointed.

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x Q. 335. And your position is that "sharp pointed" is a fair abridgement of the language you have quoted? A. Yes.

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x Q. 336. And you are prepared to defend your marking of it as an abridgement upon that statement? A. Yes.

x Q. 37. And is that the principle you applied in marking other things in Webster's dictionary which you term abridgements or paraphrases? A. Let me choose two or three, will you?

x Q. 338. I want the answer to this question? You will have your chance later with your own counsel. I am trying to find out the principle upon which you marked these things? A. I hold that in condensing or abridging anything from Webster, it is necessary only to give in the briefest possible way that which will characterize the object or thing, whatever it is. I hold that the

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Prof. Harry Thurston Peck—Cross.

Webster definition is not a definition. It is an encyclopedic illustration, because, after all "sharp pointed" is sufficient, and "sharp."

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x Q. 339. That may justify the omission of Webster's encyclopedic matter, but I fail to see how it can justify your marking the matter quoted as having been abridged or paraphrased and inserted in defendant's dictionary, and I therefore ask you why you mark that as an abridgement? A. I mark that as an abridgement because, if you—you must remember that the adjective and the noun together are not legitimate dictionary matter, but if anybody says "triangle" or if anybody says "cone" or "acute cone" it means a sharp cone, sharp pointed cone, "sharp" pointed and "sharp" cover the point, and that matter in music is entirely covered because it says it is sharp in pitch, acute in pitch.

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x Q. 340. I made no reference to the musical use? A. I thought you did.

x Q. 341. No, I refer to "acute accent" meaning No. 5 in Webster's dictionary? A. Well, anybody would say a sharp accent then. I think that that is a very much condensed definition, which really, however, explains what is in Webster.

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x Q. 342. In other words, you discover sufficient similarity between the words of defendant's dictionary, "sharp pointed" and the geometrical definitions, quoted from Webster to draw the conclusion that defendant's dictionary was derived from and based upon Webster's dictionary? A. Based upon it, yes. You will notice there are other definitions there that don't profess to be derived from Webster, but I think I might have marked with the parallel lines that matter of "acute in pitch;" that is equivalent to your definition there of a musical term. I did not do it.

Prof. Harry Thurston Peck—Cross.

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x Q. 343. I have not referred to a musical term?

A. No, you have not referred to it. I am regretful about it, that I did not mark it.

x Q. 344. Do you mean to say that the meaning of an acute accent referring to the pronunciation of a word is adequately abridged by the phrase "high in pitch or shrill" which appears in defendant's dictionary? A. Yes, that is what an acute accent is as distinct from a grave accent.

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x Q. 345. Webster here defines an acute accent as follows: "An acute accent is that which elevates or sharpens the voice?" A. That is a foolish definition. This is much better.

x Q. 346. You prefer yours? A. I prefer mine, yes, I think it is much more true.

x Q. 347. So you think all of the matter marked under the word "acute" in Webster's dictionary in this exhibit is properly marked as having been paraphrased or abridged in defendant's dictionary. A. In the sense that whatever is in the defendant's dictionary would be sufficient for the understanding of any sensible person if he had to apply to "accent" the words as Webster has done. I object of course to the encyclopedic matter being inserted there. That is to say, take an acute accent. We just say "acute." What is an acute accent? Why, a shrill sharp accent.

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x Q. 348. Is your marking of this word "acute" a fair sample of what you have termed abridgement or paraphrase throughout your markings of this exhibit? A. I think it is a rather close marking, but I am willing to stand by it. You will find as I say, if you let me choose a few parallel bars there you would get an average, or if we come to that later, Mr. Carroll can bring that out. You must not take two or three which you

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Prof. Harry Thurston Peck—Cross.

object to. They are very closely marked I admit. In these two or three instances the marking is very close, but I still think that it is adequate. And in order to get a notion of my theory one should bring up a great many more instances, not pick them but choose them at random.

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x Q. 349. I am using the exhibit which you yourself prepared and have had an opportunity only to examine a few instances of what you have marked as paraphrasing and abridgements. I am using your own selections. A. You have to use them just as they come. Why not?

x Q. 350. As indicating what the marking means? A. Begin with the first page and go right along and see what you find. There you are, going to jump about twenty pages to get something.

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x Q. 351. In this exhibit of yours you have marked all of the matter under the word "theology" in Webster's dictionary of 1847 with the vertical blue mark indicating that the whole of it has been paraphrased or abridged and carried into defendant's dictionary? A. It does not mean that the whole of it has.

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x Q. 352. Wait a minute until I ask the question. What did you say? A. The whole of it—I object to that out of a Websterian Encyclopedic paragraph. The editor has abridged so much, as he should, but he really did not care to go into some theological point.

x Q. 353. If the editor of defendant's dictionary did not use and abridge or paraphrase the whole of it why did you mark the whole of it as having been so used or paraphrased or abridged? A. I don't know what the thing is. I am talking of generalities. Show me the instance. As

Mr. Carroll said each of these has got to be judged on its merits and I cannot tell without seeing it.

x Q. 354. I will show you the exhibit, and I call your attention to the fact that under this word "theology" in Webster's dictionary Webster defines "Natural Theology, moral theology, speculative theology and scholastic theology," in addition to other definitions of the word. These definitions cover about twelve lines all of which you have marked with a blue mark to indicate that it has been paraphrased or abridged. Please find the meanings of those terms in an abridged or paraphrased form anywhere in defendant's dictionary and particularly under defendant's word "theology?" A. There are three classes of theology you spoke of, I think.

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x Q. 355. No, four; natural, moral, speculative and scholastic? A. Now, you know that some of this is in the exact words of Webster.

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x Q. 356. I am not alluding to the parentheses underscored to indicate identity. I have excluded that part of the definition from my question, and ask you to point out the alleged paraphrase or abridgement of the four definitions given by Webster and marked by you? A. Under "ordinary theology," "the science that treats of the existence, nature and attributes of God, especially of man's relation to God; divinity." And there is next to it "Theophany," "the manifestation of God to man by actual experience." The point is "the science of God and divine things." This seems to me quite sufficient. You have a long definition here with all kinds of theology in.

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x Q. 357. None of which are defined in defendant's book, are they? A. Yes, which are covered by the defendant's book, as, for example, here,

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Prof. Harry Thurston Peck—Cross.

“the science that treats of the existence, nature and attributes of God, especially of man’s relation to God; divinity.”

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x Q. 358. Is not all of that comprehended by the underscored portion of the Webster definition indicating identity? A. Not all of it. I ought to have marked some more. For instance, he has “divinity” here which we have also, but I have not marked it. Remember, this is a very long paragraph; in fact, it is three paragraphs. Now, there are two general points, the relation of man to God, and the knowledge which man has of God, and the nature and attributes of God; divinity. Now, you start off with divinity, which I did not mark unfortunately, but should have done.

x Q. 359. Mark it now if you want to?

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MR. CARROLL: No, we will stand on the exhibit as it is. We are satisfied with the exhibit as it is.

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THE WITNESS: All that was essential for our purpose and for the purposes of the editor of this book, which I had nothing to do with editing, is this: “The science which treats of the existence of God,” and that I should call—take the word down here “Natural theology.” That is the knowledge of God from his works, especially of man’s relations to God. That is merely theology, and “divinity” stands by itself as the general definition of theology. Speculative theology of course—these are all encyclopedic, but we have got under the head of “theology” the things that belong to it told in a very simple way; that is “the science that treats of the existence, nature and attributes of God, especially of man’s relation to God; divinity.” I think that that is a

Prof. Harry Thurston Peck—Cross.

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paraphrase of your paragraph; in fact, it contains your actual words in part.

x Q. 360. Which you have marked in the exhibit? A. Marked in the exhibit with the exception of one word.

x Q. 361. In all fairness, is defendant entitled to the benefit of any greater similarity than is indicated by the underscoring? A. Well, I think that is sufficient; as a matter of fact, you may merely underscore these words, because taken by themselves they don't make sense; they don't hang together; they are not a complete sentence; the sentence is a very very long one.

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x Q. 362. How about the separate sentence to which I call your attention? A. The separate sentences represent the various forms of theology which are defined here, though not by name, and in an abridged dictionary intended for young, immature people, it is all that is necessary.

x Q. 363. You understand, do you not that the subject of the present inquiry is not the adequacy of defendant's definitions— A. Oh yes upon the adequacy of the abridgement. This is an abridgement intended for young people and immature people to define the various branches of theology, it is not necessary to define them as such, but they are defined in substance out of your paragraph, and the identity of this definition here with your paragraph is shown by the actual words that are used; they are your words. I want to mark one more. That is all I have to say. I think for an abridged dictionary that is a sufficient abridgement.

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MR. HALE: The answer of the witness is objected to as wholly irresponsible.

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Prof. Harry Thurston Peck—Cross.

THE WITNESS: Can't I respond then somehow or other. Whatever you have in the Webster 1847 is conveyed in sense by the close abridgement of the writers of these two dictionaries, and part of it in your own words.

x Q. 364. And that part you have marked? A. Yes.

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x Q. 365. Then why do you try and take credit for matter which does not appear in any manner? A. It does not appear in words; paraphrasing does not mean repeating the words, but that comes under the head of giving the sense of it. Now, this is the sense of it in our definition.

x Q. 366. You have stated that a paraphrase or an abridgement implies an original, and that the paraphrase or abridgement must contain the sense or idea of the original? A. Yes, I think it does.

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x Q. 367. Now please point out the senses of the original Webster which I have called your attention to under the terms "natural theology, moral theology, speculative theology, and scholastic theology," all of which you say is contained in defendant's definition?

MR. CARROLL: I object to this as having been already fully answered by this witness.

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THE WITNESS: Mr. Hale says it is not responsive. I would like to put it in some form that it would be responsive.

x Q. 368. (Question repeated) Now, please point out the senses of the original Webster which I have called your attention to under the terms "natural theology, moral theology, speculative theology, and scholastic theology," all of which

Prof. Harry Thurston Peck—Cross.

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you say is contained in defendant's definition? A. I don't know whether I am to say any more or not. I have not anything to add to what I have already said.

x Q. 369. You cannot point out anything further then? A. I point out, to me it is sufficient; everything in the Webster paragraph, that is as much as you want for an abridged dictionary, is there taken from the book, as shown by the similarity of the language in part.

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x Q. 370. Do you assert that defendant's dictionary contains enough similarity to indicate that the matter referred to in Webster's dictionary, under the heads "natural theology, moral theology, speculative theology and scholastic theology" aggregating some eleven lines are actually used and incorporated in defendant's book?

MR. CARROLL: I object again on the ground that this has already been fully answered by this witness, and request the witness not to answer unless he has something to add to what he has already said.

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A. If I answered it would be merely to repeat in different form what I have already said.

x Q. 371. You maintain then that this marking of the entire Webster definition under "theology" is a fair marking to indicate an abridgement or paraphrase? A. It covers theology, yes.

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x Q. 372. And that is a fair sample of what you have designated as abridgement and paraphrase throughout this exhibit? A. I think I have some much more—that the abridgement is very much more obvious in some cases—in most cases. I don't consider the few instances you have given justify you in forming any conclusion about the

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Prof. Harry Thurston Peck—Cross.

in matter at all until you have allowed me or Mr. Carroll, rather, to bring forward the other or a great many passages marked with vertical bars, so that a really true and fair opinion can be formed.

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x Q. 373. In your exhibit under the word "adventure" (noun) you have marked with your vertical blue mark as having been paraphrased or abridged the third meaning given by Webster, which is as follows: "A remarkable occurrence; a striking event, more or less important; as the adventures of one's life." The entire definition of adventure in defendant's book is as follows: "An event, the issue of which is determined by chance; v. t., to hazard or risk." I fail to find the meaning or the sense quoted from Webster and which you referred to as having been paraphrased or abridged. How do you justify that marking? A. If you want to know, Webster has two heads to "adventure." One says to "dare" and the other "to hazard." Now, that is wild and asinine.

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MR. HALE: It is also irrelevant and irresponsible.

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THE WITNESS: You mean the noun. I should say that was not only a paraphrase, but the editors there have actually taken your words.

x Q. 374. Are you referring now to the particular meaning which I quoted, none of which words are underscored? A. Will you read the question?

x Q. 375. (Previous question read by the stenographer as follows): Are you referring now

Prof. Harry Thurston Peck—Cross.

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to the particular meaning which I quoted, none of which words are underscored? A. I justified the marking in this way; that out of what occurs here we have taken, or the editors took so much as suited his purpose. The thing that you referred to, the quotation from Bacon, is an obsolete meaning; he did not, therefore, take that, but he marked the whole paragraph because he got all his meaning out of it, such as "hazard" and "risk" and "chance." It does not follow that everything in the marked paragraph appears in some form in the dictionary in question.

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x Q. 376. In other words, you have marked "senses" in Webster with this vertical mark which do not appear in any form in defendant's dictionary; is that correct? A. I have marked paragraphs that contain so much as seemed necessary for the purpose of the definition of adventure, not taking obsolete—that is, I did not take "bill of" or "note of" at the bottom.

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x Q. 377. I have not inquired about that phrase as yet? A. Well, I say out of that paragraph comes so much as is necessary to satisfy the editor's notion of a word, definition, and if he did not choose to put in any technical part of it, why, none the less I marked the paragraph; because our definition comes out of that paragraph it does not follow that everything in the paragraph has got to be worked in.

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x Q. 378. This is a separate and separately marked paragraph in Webster, giving as the meaning of the term "adventure" as "a remarkable occurrence, a striking event." Do you find that sense given in the defendant's dictionary; please answer yes or no. A. No.

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Prof. Harry Thurston Peck—Cross.

x Q. 379. Yet you have marked that paragraph of Webster's definition as having been paraphrased or abridged? A. The whole paragraph, because the whole paragraph is not there, as usual, with a sort of a sub-paragraph to the thing, but it is a definition of a series of definitions, and out of them the editor took such as suited his purpose, and the rest he left.

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x Q. 380. And you discover internal evidence of the fact he used this paragraph of Webster's 1847 edition in composing the definition of the word "adventure" in defendant's dictionary? A. You find the same words.

x Q. 381. Why did you not underscore those words, then, or any of the words in that paragraph which is paragraph number 3 in Webster's dictionary? A. Paragraph No. 3 was not in question; was not touched.

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x Q. 382. It is the only paragraph as to which my question related? A. "Hazard," "risk," "chance." No, you are taking too much. All these objections of yours relate to where Webster goes away and takes the word and hitches it up to some other word and expects to find that we have done the same. We have what a dictionary ought to have, which is a definition of a single word. You ought not to have doublets and triplets and all that sort of thing. I marked the paragraph because out of the paragraph came our definition, or a definition of the defendant's.

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x Q. 383. You have stated certain omissions in defendant's dictionary. Why do you mark omitted matter as paraphrased or abridged matter when not even the sense of it is contained in defendant's dictionary? A. Well, it might have been marked that way there.

Prof. Harry Thurston Peck—Cross.

6569

x Q. 384. Do you think it was proper to mark paragraph No. 3 under the term "adventure" in Webster's dictionary as having been paraphrased or abridged? A. Well, not if it gave you that impression, but the notion is that it is the whole paragraph that is in question; that is, the whole series of paragraphs in question, and not that single one.

x Q. 385. So in preparing this exhibit then whenever any part of Webster's definition seemed similar you have marked the whole of what he put under the word; is that correct? A. I take the whole paragraph and say out of this paragraph we get a definition. 6570

x Q. 386. Suppose there were fifteen paragraphs, as in this instance, you would take the fifteen paragraphs although only one bears any resemblance whatever to the definition; is that correct? A. Well, no, that is not correct. It is correct in this instance. 6571

x Q. 387. You have underscored the words "hazard, risk, chance." In Webster's dictionary as being identical with the words used in defendant's dictionary. And this identity caused you to mark this paragraph 3 as paraphrased? A. The whole paragraph was marked; that is a paragraph, yes, it caused me to mark the whole definition of Webster from the start, showing that it was undoubtedly used by the editor of that book or those books. 6572

x Q. 388. But your marking asserts that this particular matter—A. (Interposing.) No, you mistake there—

x Q. 389. (Interposing.) Wait a moment until I get through with this particular matter. In addition to the words underscored which you assert

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Prof. Harry Thurston Peck—Cross.

were copied, that the additional matter was paraphrased or abridged and have taken credit for that much matter as having been derived from Webster's dictionary? A. No, I don't take credit for that; I take credit only for what—you see, in the first place, the exhibit stands there for anybody to look at it. It is not that I have got to say something, but there is something for people to look at, and my understanding is if a paragraph, that is to say a long definition or series of definitions in Webster contain the material for a definition for us or for the defendants, then the defendants owe to Webster what they took from him; that is to say, they owe their phrases or words or whatever it is to him, and the thought, if it is only a thought. He has got another definition.

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x Q. 390. And you offer this marking of this paragraph to which I have called your attention as evidence of the fact that defendant's book was based or founded upon Webster's dictionary of 1847? Yes, the evidence is cumulative. It does not consist in one paragraph or one exhibit or one thing; the evidence depends upon the whole exhibit itself. It is the cumulative force of a dozen, twenty, thirty—I don't know how many there are.

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x Q. 391. Of this kind of thing? A. Well, of actual copied words or of paragraphs which contain words that have been transferred to these two books. It does not follow—necessarily a paraphrase or an abridgement does not look so much to the words; it looks to so much of the thought as it wishes. Well, it chose very little out of that, but nevertheless that to my mind was a Websterian source.

Prof. Harry Thurston Peck—Cross.

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x Q. 392. You don't mean to say—A. (interposing) One is not obliged to take everything that Webster has there.

x Q. 393. No, but he is obliged to repeat the essential sense of it if he marks it as a paraphrase or abridgement, is he not? A. Take the essential sense, the main sense; that of course is to "dare, hazard and adventure."

x Q. 394. I mean the main sense of the paragraph marked as an abridgement? A. Well, if you take that by itself and hold it up by itself and say, "Here, this is a blue mark, and there is no sense in it, there is nothing about it in the other book," why, that might be—I don't know how that would be looked at, but the way I look at it is that that is not to be taken alone but the whole amount, the whole definition, in Webster, I have taken, and out of it so much is transferred to the other book. Now, it does not make any difference whether it is a sentence or five, so that you have the ear marks; you will find that there is less paraphrasing than there is actual copying and that is the strongest thing. I don't hear you say anything about that. 6578

x Q. 395. You have attempted to add these instances which you have marked as paraphrases to the instances of identity which you attribute to copying and have founded your opinion in part upon them, have you not? A. Yes. 6579

x Q. 396. And is this a fair instance of part of the basis—A. (Interposing) No, that is no instance comparatively. There are instances that will make you gasp when you get them. 6580

x Q. 397. Do you mean to assert that this third definition of the word "adventure" as "a remarkable occurrence or a striking event, more or

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Prof. Harry Thurston Peck—Cross.

less important," as given by Webster is an obsolete meaning of the term? A. Yes, he has nothing later than Bacon.

x Q. 398. Do you mean to say that that is an obsolete meaning of the term? A. A striking adventure, a striking occurrence?

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x Q. 399. Such as a striking event or a remarkable occurrence? A. No, but I was saying on general principle as far back as Bacon they are often obsolete and in many other cases they would not necessarily be—

x Q. 400. You don't mean to say that "adventure" is obsolete? A. Oh, no.

x Q. 401. You don't mean to say that "adventure" in the sense of a "remarkable occurrence" is obsolete? A. No.

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x Q. 402. Or that "adventure" in the sense of "a striking event more or less important" is obsolete, do you? A. No.

x Q. 403. And you don't find that meaning given—A. But I think it is obsolescent. When you say an important occurrence or—what is that phrase there?

x Q. 404. A striking event, more or less important? A. That is not obsolete, no.

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x Q. 405. Under this same word the concluding paragraph in Webster defines a bill of adventure as follows: "A bill of adventure is a writing signed by a person who takes goods on board his ship wholly at the risk of the owner."? A. Obsolete.

x Q. 406. You have marked that as having been paraphrased or abridged and inserted in the paraphrased or abridged form in defendant's dictionary. That is not true, is it? A. No, I have not marked it as necessarily having been abridged. I have marked all that occurred under "ad-

Prof. Harry Thurston Peck—Cross.

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venture'' as a source of the definition of the two books.

x Q. 407. Then that is all that the vertical marking means? A. The vertical marking means that out of a mass of material the editor or editors of those two books have taken the meaning or perhaps sometimes the exact language of the original Webster; but I did not divide it up piecemeal that way. I say, here is a source, that is, a mass of material; out of it comes a little or a lot; it depends.

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x Q. 408. In other words, then, whenever you found any identical word in the respective definitions you underscored them and then placed a vertical mark beside all the matter in Webster and termed it a paraphrase or an abridgement; is that correct? A. It depends on how closely they were kept; you will find the bill of adventure, which is a thing out of use—

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x Q. 409. That is not contained in defendant's dictionary at all, is it? A. No.

x Q. 410. Yet you have marked it. What does the marking indicate in that case? A. Except for the bill of adventure which is obsolete—that is a very good instance. Here is a—

MR. HALE: I object to the witness continuing in an irrelevant and irresponsible manner and ask the witness to answer the question.

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THE WITNESS: Let me answer the question. It may not ease your mind very much. You want to know what I mean by a vertical bar, don't you? Isn't that what you have been trying to get at for an hour?

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Prof. Harry Thurston Peck—Cross.

x Q. 411. I want to know why you have placed a vertical bar by certain matter which is pointed out and which does not appear anywhere in Defendant's dictionary? A. But that is not the way to get at it.

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x Q. 412. That is what I want to get at? A. Because it was a part of a mass of material out of which I did get something; that is to say, they cannot be separated, at least they all belong to the definition of "adventure"; the editor takes out so much of that paragraph or series of paragraphs, all of them linked together, what he wants. The rest he throws aside. What you have in Webster represents something, that has been milked. He does not necessarily take everything out of it, but the paragraph is marked with the vertical bar as being a source.

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x Q. 413. That does not harmonize with your definition of abridgement or paraphrase because you specifically stated that the sense must be preserved? A. Yes, the sense is what you take.

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x Q. 414. Here in Webster I pointed out certain specific senses which have not been preserved in defendant's book and nevertheless you have marked them as having been paraphrased or abridged, and I ask you to justify it or to admit that the marking is wrong? A. It is only in such particular instances as the bill of adventure. That is partly covered by the other definition in the defendant's book. What is the definition you objected to anyhow that is not covered in the "certain occurrences."

x Q. 415. I both read and showed you the exhibit containing the definitions? A. I know, but we have been talking a good deal since then.

2 Q. 416. I ask you to point out in defendant's dictionary any word or words taken from the concluding paragraph under the word "adventurer" in Webster's dictionary which reads as follows: "A bill of adventure is a writing signed by a person who takes goods on board his ship; at the risk of the owner?"

Mr. Cramm: I again object to this whole line of examination on the ground that the exhibit speaks for itself. I object further on the ground that the witness has already several times fully answered Mr. Hale's question, which is in the long and directed simply to discovering what Dr. Peck went by his various sayings, and which Dr. Peck has several times explained he used to indicate the paragraph in Dr. Webster's book which was the basis or ground work or source from which the definition in defendant's book was taken, either as an abridgement or as a paraphrase, and the sole purpose of this exhibit is to show that defendant's book is based upon Webster's book, and it is understood by everybody that defendant's book is an abridgement and not a copy of an unabridged book. 6948

Mr. Hale: The witness has proposed and presented this exhibit as pointing out the internal evidence that defendant's book was based upon or taken from Webster's dictionary, and he has testified that his various sayings indicate such internal evidence by reason of similarity of some rather than language. I desire to find out— 6949

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Prof. Harry Thurston Peck—Cross.

THE WITNESS: I beg your pardon, similarity of sense *or* language; sometimes it occurs you get the actual—

MR. HALE: (Continuing). I desire to find out why he has marked matter in Webster when no similar sense or language appears in defendant's book?

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MR. CARROLL: It has further been frequently stated by this witness that even in an unabridged dictionary he considers it is unnecessary to indicate encyclopedic matter and that particularly in an abridged dictionary he considers it superfluous. Much of the matter referred to by complainant's counsel is of the nature spoken of; that is to say, encyclopedic matter. Other matter referred to by complainant's counsel comes within the definition of technical matter; still other matter comes within the class which may be called obsolete and is therefore properly omitted from any up-to-date book. If complainant's counsel can find any other classes of matter omitted, it is requested that he prepare those for the use of the Court. Defendant's counsel is ready to stand upon the exhibit unexplained by the witness.

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MR. HALE: The explanation of why defendant omitted matter which appears in Webster does not explain why he marked that same omitted matter as indicating identities and similarities between defendant's book and Webster's, and presenting it as evidence that defendant's book was based upon or abridged from or in any way connected with Webster's dictionary.

Prof. Harry Thurston Peck—Cross.

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MR. CARROLL: The vertical mark is not intended to indicate identity.

MR. HALE: In many instances it does not even indicate similarity.

MR. CARROLL: If that be so, it speaks for itself.

x Q. 417. You have marked the paragraph relating to a bill of adventure which appears in Webster with a blue mark indicating some connection, similarity or identity in language or idea between defendant's book and Webster's dictionary. Please point it out if it exists in defendant's dictionary? A. That particular sentence does not appear at all in the defendant's book or anything about it. It is obsolete, but the whole mass of matter which it belongs to contained that which was used and consequently the mass was marked as a source.

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x Q. 418. That paragraph ought not to have been marked then? A. I don't say so. I think the whole paragraph might be marked, or I would be willing to put a red mark on it if you want to, if it would please you, and take that particular "bill of adventure" out; that is no part, however, of my contention—you won't let me explain, or rather you want me to explain too often the same thing.

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x Q. 419. In other words, if the vertical blue marks are taken as any criterion at all, the exhibit as prepared will indicate that there are more identities and similarities between defendant's dictionary and Webster's dictionary than in fact exists, and this instance under the word "adventure" is an illustration of that is it not? A. No. A vertical bar there does not mean that

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Prof. Harry Thurston Peck—Cross.

everything in there has been paraphrased and transferred to the smaller book.

x Q. 420. What does it mean then? A. It means that some of it, that certain parts of it, that it is a sort of reservoir from which something has been drawn.

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x Q. 421. Certain parts of all the matter that appears in Webster's dictionary under that vocabulary entry; is that what you mean? A. Yes.

x Q. 422. And that is the theory upon which you made these vertical marks upon this exhibit? A. Yes. And I say, as Mr. Carroll would say, the exhibit speaks for itself, and I believe that the Court will find, not picking out a few things, but looking at them all, that the case is made out. You said nothing at all about where the thing is word for word the same; that does not seem to affect your mind at all.

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x Q. 423. In your affidavit which you verified the 29th day of February, 1912, and which was used at the hearing of the motion for a preliminary injunction in this case in which you explained this identical exhibit which you prepared, I find the following language: "The blue lines at the sides of paragraphs on the pages taken from Webster's New Illustrated Dictionary indicate definitions manifestly abridged from definitions similarly marked in the pages of the 1847 dictionary." Was that statement true? A. Yes.

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x Q. 424. Is it true now? A. Yes; always was true.

x Q. 425. Do you wish to modify it in any respect? A. Not in any respect, no.

x Q. 426. You are not aware that your testimony as given to-day has modified that in any respect? A. No, because you won't take my ex-

Prof. Harry Thurston Peck—Cross.

6609

planation of what I meant by the marking. It does not mean that everything in the paragraph has been abridged, but that out of the paragraph an abridgement has been made or actual words have been taken. It has been a source for the definitions of the defendants. It may be very little sometimes.

x Q. 427. You do not mean by this vertical mark then that all of the matter embraced within it contains internal evidence that one book was used in the composition of the other?

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MR. CARROLL: Again I object to this question as having been many times answered by this witness.

A. No.

x Q. 428. I presume then there are many other instances in this exhibit where the vertical markings will embrace matter as to which there is neither any verbal identity or any identity of sense; is that true?

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MR. CARROLL: I again object. The exhibit speaks for itself.

A. I don't know. You have not asked a question. You first made a categorical statement, you asked something, and then you say; is that so. I don't know what you assume.

x Q. 429. Is the assumption contained in the question in accordance with the facts? A. No, I think not.

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x Q. 430. In this exhibit, under the word "adoption", in Webster's dictionary I find nine paragraphs consisting of thirty-three lines, comprising three definitions, and six specific illustrations, all of which you have marked with the vertical

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Prof. Harry Thurston Peck—Cross.

blue line which you say indicates that the same has been paraphrased or abridged. I find that you have underscored nine words in the first line and a quarter, as being identical in the two books. The entire definition under the word "adoption" in defendant's book consists of sixteen words, of which nine are identical with the words underscored in Webster. Point out any indication of abridging or paraphrasing the remaining paragraphs in Webster's definition as to which there is no identity either in language or in sense?

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MR. CARROLL: I again object to this question on the ground that the exhibit speaks for itself, and on the further ground that the exhibit is not intended as a conclusive proof of the fact that these books are based upon Webster's dictionary of 1847. In proof of that fact it is maintained that the books themselves which are in evidence speak for themselves. This exhibit is intended merely as a ready manuscript for the assistance of the Court in observing the similarities of defendant's book, with the 1847 Webster. If the Court finds that it is an incorrect instrument, it is for the Court to reject it on its own merits.

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MR. HALE: The witness has marked portions as indicating similarities where there is no similarity, and is now called upon to justify it.

THE WITNESS: Now, under the head of "adoption" the general definition is the same as Webster's word for word; also the secondary definition is the same as Webster's word for word; the remaining two lines cover the general sense of

Prof. Harry Thurston Peck—Cross.

6617

“adoption” without going into encyclopedic matter, and the paragraph is marked because as I say it was the source of the definition in the other book.

x Q. 431. You don't mean to assert by this marking then that the five paragraphs in Webster's giving specific meanings and respectively introduced by the words “adoption by arms; adoption by baptism; adoption by heart; adoption by matrimony; adoption by testament” are included in defendant's dictionary either in words or substance? A. Well, in general substance, yes, in the sense of acceptance. I wish I had one of those defendant's books. Webster gives various kinds of adoption; adoption by arms, and all that, is obsolete. It is old; nobody would use that, but out of the whole series there we have a general notion of adoption which is according to Webster's own words which appear there, “the act of adopting; the state of being adopted.” Now, then “voluntary acceptance, admission into intimate relations, the act of adopting,” that is enough for an abridged dictionary, “the state of being adopted.” All the feudal laws and Roman laws in which adoption might take place would be out of proportion here, therefore, they are not taken, but from that encyclopedic mass in Webster one has the true definition and a very full, neat and good definition of what adoption is. You must consider the readers for whom these books are made. They are not readers that want to go into the question of adoption by marriage, adoption by arms, and all those things.

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MR. HALE: The answer is objected to again as not responsive, the question not being the adequacy of defendant's defini-

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Prof. Harry Thurston Peck—Cross.

tions, but whether or not there is internal evidence of the same having been abridged or paraphrased from matter in Webster's dictionary which this witness has marked as indicating it; and motion is made to strike it out.

x Q. 432. Do you regard that as a fair example of what your vertical markings mean in this exhibit? A. That is if you understand my definition of the vertical bar—

x Q. 433. I presume you are aware that you have departed widely from your first definition of the meaning of the vertical bar? A. No, not at all.

x Q. 434. And of the meaning of an abridgement and paraphrasing? A. No. The point is you seem to take it—

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MR. CARROLL: Please answer as far as possible, Dr. Peck, yes or no.

THE WITNESS: I will stand on that.

x Q. 435. You are willing to allow your markings of this word "adoption" to stand as a fair specimen of what your vertical blue marks mean in this exhibit? A. Yes; with all the other specimens.

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x Q. 436. I notice you have underscored the main vocabulary word in each instance. Do you deem that any evidence that one book was taken from the other? A. I don't think I understand you.

x Q. 437. In this exhibit I presume the blue marking is intended as you have stated to indicate either identities or similarities as the case may be? A. Yes.

Prof. Harry Thurston Peck—Cross.

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x Q. 438. I notice also that you have in each case underscored the vocabulary word itself. Do you regard that as evidence— A. (Interposing.) No, not at all. It is only for convenience of reference to show that they were embodied in both books.

x Q. 439. You don't rely upon that in expressing your opinion that one book was based upon or abridged from the other? A. No, not at all. That should really have been marked in red or blue or something like that. 6626

x Q. 440. Instead of marking these paragraphs and senses in Webster's which are not reproduced in any form in defendant's dictionary with a vertical blue mark, why did you not mark them with the red "o" to indicate an omission as you did in the case of words wholly omitted? A. Well, simply because I could not—at least I could—but my point was this, it comes back to the old definition of the vertical bar, that vertical bar holds together a mass of sentences and definitions and so on that were used, some of which were used. I think it would have been better now, as I look at it to have marked them separately. 6627

x Q. 441. But certainly it would have been fairer, wouldn't it, doctor? A. I think it might have been fairer to you. On the other hand I don't think the specimens you brought out here by any means are typical at all. I think they are about all that you would find of that sort; in other words, some paragraphs are so obviously paraphrased or represent paraphrasing that I could not say in them there might be something I did not care for or that the editor did not care for. I speak for myself only as representing the opinion of the editor or the purpose of the edi- 6628

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Prof. Harry Thurston Peck—Cross.

tor; I had nothing to do with it. My notion was there might be an odd paragraph where that which was taken is so entwined with what was not taken that you could not use the red marking very well.

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x Q. 442. Do you regard any of the particular instances which I have called your attention to as specimens of that last supposition of yours? A. Well, hardly, no. But you have to make one rule really for the whole thing.

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x Q. 443. And the best rule would be to mark only identities would it not? A. Yes, I think that might save a great deal of controversy and trouble. No, I beg your pardon, I won't say that; identities and similarities, because you see it is not alone what you find in these paragraphs, these paraphrase paragraphs, the matter there is never very important, it is the identity of language in the definitions that you find scattered all through there; that is what really counts. You could throw away all this without any damage to your case, but I think they are cumulative. As I say, they add weight to the actual identity of language, because they show an identity of thought and sense.

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x Q. 444. Such as the instances that I have specifically called to your attention? A. Yes. There is something in the paragraph which goes into one or the other two books at issue.

x Q. 445. Exactly as you have explained in answer to particular instances? A. Yes.

x Q. 446. And in no other way? A. In no other way? A. In no other way, unless it happens that sometimes there might be a whole string of these. You find yourself a list of say five or six of these paragraphs and you find two which you objected

Prof. Harry Thurston Peck—Cross.

6633

10. For, the marking of the vertical bar of the whole series shows that out of that series material was taken from Webster and went into one of these books.

x Q. 447. My point is that the vertical marking can not be taken at its face value as indicating that all matter including everything has been either copied, paraphrased, or abridged and that conclusion is true, is it not? A. You mean to say that every item that has a parallel bar by the side of it has not been paraphrased or abridged, yes. Every item of a paragraph of a series of items that is true, yes. It is to call conveniently to the mind and the eye—of course, those paraphrases are rather subtle sometimes, and you have to look pretty hard to see where it comes out, and so also with abridgement. Here is a mass of information out of which certain things have been taken. Well, you mark down the whole lot. Sometimes you have taken of course, which is natural, of course it ought to be, it ought to represent your side as strongly as possible, and therefore you take only such instances as seem to be rather defective, but we have not seen any of the other side at all, and we have seen nothing yet of the identical words.

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x Q. 448. Your exhibit has all identical words underscored, has it not? A. Yes.

x Q. 449. So they will appear without question? A. Yes, there would be no doubt about those, but still I think it was not wrong; it might have been better to have marked with red the paragraphs, the specific sub-paragraphs, you might say that defined in an encyclopedic manner something or other. I think that as you say would have represented the thing a little better, but

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Prof. Harry Thurston Peck—Cross.

there were a great many instances of where the whole paragraph was bound and entwined together, and I testify that one would lose considerable advantage here if he marked them in red or he did not mark them at all.

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x Q. 450. You stated on your direct examination that there were instances in defendant's books where a dozen definitions in order have been taken outright word for word from Webster's Dictionary of 1847. Please point out any such instances. A. I did not say there was any instance where twelve consecutive definitions, but twelve definitions running along closely together might be found.

x Q. 451. Please point out twelve such instances. A. That is, wholly or in part? Instances where the words used by Webster are the words found here?

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x Q. 452. Where the definitions in order have been taken outright, word for word, from Webster's Dictionary. A. Not consecutively, because there might have been some words dropped from Webster or inserted by the editors of this, but a dozen that are very near together, with only perhaps a break of two. Is that what you would like?

x Q. 453. Point out a dozen such instances. A. Well, there are twelve in order that happen to be consecutive.

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x Q. 454. Call them by name. A. That is they are consecutive in this, in the small book.

x Q. 455. What they are; say "I read twelve words from defendant's dictionary as follows," to illustrate. A. "Admeasure, admeasurement, administer, administerial." Here is one break. Just put a blank line there. "Administration, administrative, administrator, administratrix, ad-

Prof. Harry Thurston Peck—Cross.

6641

mirable, admiral,"—that is in part—then there is one break. Put a blank line. "Admiration, admire." If you read from "admeasure" down through 'admire' you will find that there are twelve definitions which are taken wholly or in part, word for word from the Webster's 1847, broken by two words that don't paraphrase or copy or anything, that stand alone. There is more in Webster, but all that is there is taken from Webster.

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x Q. 456. You mean that the words underscored will be found in Webster? A. Yes, the 1847.

x Q. 457. Would they be found also in Worcester? A. Not the words, no; some of them would but Worcester would never copy Webster.

x Q. 458. Would these same words be found in the Century or the Standard Dictionary under these titles? A. Not the words, word for word. You must notice those, it is not merely here and there a word, but it is the solid definition taken right out bodily, and then on the next column there is another series of thirteen. It runs all through that way.

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x Q. 459. In other words, you think that comparing these words with any other dictionary than a Webster's 1847 Dictionary and underscoring identical words would not produce a similar result to the twelve or thirteen words which you have indicated in this exhibit? A. No. I have examined several dictionaries in that way, unabridged dictionaries and there is no likeness at all. You see, Webster's definitions were very good, and they were preserved from his 1828 down to 1847 largely, and therefore they are about the best definitions there were for clearness and simplicity.

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Prof. Harry Thurston Peck—Cross.

x Q. 460. And it is this identity which leads you to express the opinion that defendants' book is based upon or taken from Webster's 1847? A. I could not resist it; the result was, it seemed to me, a mathematical demonstration.

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x Q. 461. Of course, that argument would equally apply to any other prior dictionary which showed a similar amount of similarity or identity or a greater amount? A. That showed the same thing. In other words, you would not know where it came from, yes.

x Q. 462. I presume all dictionaries which contain accurate spelling and accurate definitions and are equally complete had a more or less inherent similarity? A. There is a kind of traditional vocabulary, you know; that is perfectly true.

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x Q. 463. As the definitions have to be expressed in the English language, necessarily numerous similar words will be used? A. But, for example,—

x Q. 464. Answer that yes or no, please, and then explain. A. I would say yes, similar words will be used; but that is not the point. That is not similarity; it is identity.

x Q. 465. You mean identity of phrases? A. Identity of words.

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x Q. 466. And that is what you have referred to in your testimony as proving that this book was taken from Webster's 1847 edition? A. Yes. It might be the same even in the 1828, but it is taken from Webster's; that is my point. It happened that I used the 1847, but, if I had chosen to, I might have gone back to the 1828, but I did not care to do that.

Q. 467. Have you any reason whatever to believe or think that this book was in fact based upon and abridged from or copied from any other dictionary than Webster's Dictionary of 1841 or Webster's Dictionary of 1858? A. I have no reason, no glimmer of light on the subject at all.

Q. 468. And you have received no suggestion to that effect? A. No. I am very frank with you. I tell you what I did and what I found, and you see what is there. If you know of any dictionary that was an older dictionary than these two and that contained the same wonderful reproduction, I think you should be fair and let us know, because one does not want to be on the wrong side of the house.

Q. 469. Then everything you know about the source or origin of Webster's book is based upon the internal evidence discovered by you in the course of your comparison of it with other dictionaries? A. Yes.

Q. 470. You have no knowledge or information other than that? A. Well, I have no personal knowledge. You mean, for instance, about men and transactions, and, for instance, somebody else abridged it. I don't know. I have approached it simply as a scholar would naturally, without taking into the question the personal equation at all. I have taken all the dictionaries and gone very faithfully through them, including the English dictionary.

Q. 471. And have you never heard it suggested that this book was never based upon Webster's Dictionary and Webster's Dictionary was never used by its author? A. No.

Q. 472. You have never heard that suggestion? A. No. I have heard this suggestion—

6653

Prof. Harry Thurston Peck—Cross.

x Q. 473. I am trying to get your opinion. You have stated you have heard something on this subject? A. But it would not help you any.

6654

x Q. 474. I suppose that is for me to say. Did it affect your belief in any way? A. I simply heard that somebody else, an Englishman, this man Bond, took steps and made a very careful condensation of it, and, as I said, when I went through it, I found that it was practically identical with these. It is conceivable that Bond's was ahead of these two dictionaries, and they simply took his work and Americanized it and added a lot of American words, still that only takes you back to Webster again because Bond shows the same similarity.

6655

x Q. 475. Do you remember the name or title of the book you have referred to as the Bond book? A. I must ask leave to substitute that after inquiry. I have been through so many minor books of no importance. Bond was an English clergyman and evidently something of a scholar and he did his work very well; it was very neatly done with a good deal of discretion.

6656

x Q. 476. Did you discover much similarity between the defendant's Webster's New Century Dictionary, or Webster's New Illustrated Dictionary and this book of Bond to which you have referred? A. Yes, there was a very close resemblance.

x Q. 477. Were those substantially reprints one of the other? A. No, Bond's had a great deal that was purely English, that was not in these at all, and as I say, curiously—well, not curiously—Canadian or South African. That was before the Boer War. He had a lot of South African English, and so forth and Hindoo, that

Prof. Harry Thurston Peck—Cross.

6657

is English, Hindoo and pigeon English, etc., and Chinese. That was the work of an Englishman obviously, and it seemed to me that it was more likely—I don't know, but Bond—I compared pages and pages of Bond with Webster's 1847, and I found so much matter that was in Bond that was not in either of these two books, nor in Webster, either, that I gave him credit for making an independent version, or else for taking one of these—there are numerous ones—and Anglicizing them, or something of that sort, but his work was very neatly done.

6658

x Q. 478. And that is all your information now upon the question of the source and origin of this defendant's book? A. Yes, that is really all, and I give them all in good faith.

x Q. 479. Did the book by Bond to which you have referred have any standing or reputation in this country as a standard dictionary? A. No, the edition taken by Scribner—Scribner bought an edition in England, which must have been rather a small edition. He sold it out and did not replenish his store, and that was the end of it, and I don't know the date of Bond exactly, because I was so perfectly certain that there was a much closer resemblance between these two books and Webster that it rather knocked Bond out.

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x Q. 480. So you don't believe this book was based upon Bond, then? A. Either of these books?

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x Q. 481. Yes. A. No, I don't believe so. It is possible, you know, but even so, that means Bond was as close to Webster where he was not Anglo-Indian or African or something of that sort; he was as close to Webster as these books, but these books have not any English element, except two or three places, where they would perhaps put

6661

Prof. Harry Thurston Peck—Cross.

them in on general principles. If it were proven that these two books had their source in Bond it would only throw you back one step, and you would have to admit that Bond was then the person who rifled the till of the 1847 Webster or the 1828 Webster. I am sorry Scribner's could not find—they thought they had an office copy. Publishers usually have an office copy of anything they have, but they had lost it and they could not give it to me, and the one I had for examination was borrowed.

6662

x Q. 482. Borrowed by whom? A. Well, I think it was borrowed—I don't really know him—by Mr. Banes, of Philadelphia, who is a friend of Mr. Wright's at the Syndicate. Anyway, between them they found it somewhere and I marked it up some, too, to show them although it was borrowed.

6663

x Q. 483. They never returned the book to you? A. I have not seen it since.

x Q. 484. You have not produced the book in this suit? A. Well, I have been talking and Mr. Carroll has not said anything. But I don't see what you would gain by discovering Bond. You could not touch him, anyway, because he was an Englishman and there was no copyright.

6664

x Q. 485. Don't you think that an Americanized version of an Anglicized copy of a foreign piracy from Webster's dictionary would be a pretty slim excuse for to-day marking such a book under the name of "Webster" dictionary? A. Why, there is no question of piracy, and I don't think there is any odium really in using Webster, which is of the past entirely, no matter whether it had been Anglicized or whether it was a straight Webster.

Prof. Harry Thurston Peck—Cross.

6665

x Q. 486. Do you know who actually compiled defendant's book as editor? A. No.

x Q. 487. Did you ever hear? A. Well, I have heard, but I did not know whether it was authentic and true or not. I understood that Mr. Roe did, but whether or not he did I don't know. His name has appeared upon the title page of the same thing, but so has Mr. Russell's.

x Q. 488. Is there any difference, doctor, between a noun and a phrase? A. Yes. 6666

x Q. 489. What is it? A. Well, a phrase is usually a preposition and its object; a noun, of course, is a single word. A phrase would have to be more than one word.

x Q. 490. A phrase might consist of a noun and an adjective, might it not? A. Yes.

x Q. 491. Would it be scholarly and accurate and in accordance with good lexicographical usage to place phrases in a dictionary and designate them as nouns. A. Well, that is what the Standard Dictionary has done very largely, and that is a good authority. 6667

x Q. 492. Do you as a literary man of wide experience regard that as good lexicographical usage? A. I don't, but I think it is a very convenient thing to have.

x Q. 493. It is erroneous however to call such phrases nouns, is it not? A. Yes. 6668

x Q. 494. Did you discover any such instances in defendant's book? A. But suppose I said this, I could make a sentence in which there may be a noun, for instance, some phrase like "never say die." I could make this "never say die" as a phrase. Now, "never say die" is a noun. You could say "square deal," which is a common phrase; that "square deal" is a noun.

666q

Prof. Harry Thurston Peck—Cross.

x Q. 495. Did you discover any instances of phrases given in defendant's dictionary and designated as nouns? A. A few, but Webster, I think, is open to censure. I don't think it is legitimate. That is a controversy, though between Webster and Worcester, whether Webster is justified in putting in, for example, a sort of adhesive plaster. I don't think he did put in "adhesive plaster."

6670

x Q. 496. Has Webster put them in? A. Yes. You pulled me up on that.

x Q. 497. I am sure you don't regard it permissible as Webster did it? A. I did not regard it should be put in as a title because I should think you should have only one word as a title.

6671

x Q. 498. Did not Webster put them in as subtitles in paragraphs? A. He put them in as subtitles, and out of that I think came the use with the Standard Dictionary; they put them in as titles; that is, they will have a lot of type with all sorts of slang phrases and everything else you can think of.

x Q. 499. It is not Websterian to insert phrases and designate them as nouns, is it? A. No.

6672

x Q. 500. There is a difference between a phrase and a compound word also, is there not? A. Oh, yes; but a compound word you cannot get uncompound really as a rule. You have got to have a compound word, otherwise you would not know what to do with the parts of it. It constitutes a compound word, one idea.

x Q. 501. Was it Websterian practice to make cross references in a dictionary to words and terms that do not appear in his dictionary? A. No.

x Q. 502. Did that occur in Defendant's Dic-

Prof. Harry Thurston Peck—Cross.

6673

tionary in this case? A. Very seldom; perhaps half a dozen times.

x Q. 503. You know that it did occur? A. It occurs in works of high repute, that matter of the cross reference which does not hit—it is only after a book has gone through a great many editions you can be sure about that. I don't think that is to be made a subject of censure in a book. Of course, there is a little laxity of editorship here, but it comes in sometimes in a way you have to put it in as a cross reference in the first part, when you think you will have it somewhere else, or have not got your list or slip or something.

6674

x Q. 504. Accurate and informing definitions are a Websterian characteristic, I believe you have stated? A. Yes.

x Q. 505. In Defendant's book I find the following entries: "Engulf; same as Ingulf." Under "ingulf" I find the entry "ingulf," same as "engulf." Do you regard that as a Websterian definition? A. That is no definition; it is a cross reference, a double barrelled cross reference.

6675

x Q. 506. That is not a Websterian method of treating the meaning of words, is it? A. Oh, no, nothing that is careless or slovenly or inaccurate is Websterian. You might make that as a general answer to cover the page.

x Q. 507. Neither the word "engulf" or "ingulf" is therefore defined in defendant's dictionary, although appearing in the vocabulary? A. That is true.

6676

x Q. 508. What is the Websterian method of spelling the word "sprite"? A. "S-p-r-i-t-e."

x Q. 509. How is it spelled in Defendant's Dictionary? A. I really don't remember.

MR. CARROLL: The dictionary speaks for itself.

6677

Prof. Harry Thurston Peck—Cross.

THE WITNESS (after examining Webster's New Century Dictionary): I don't find the word in the Webster's New Century Dictionary.

x Q. 510. In Webster's New Illustrated Dictionary I find the entry "spright, n. a sprite"? A. I did not know that spelling, s-p-r-i-g-h-t.

6678

x Q. 511. Is that spelling "spright" the Websterian spelling of that word? A. No, nor anybody else's at this present time. It may have come down from Nathan Bailey.

x Q. 512. I do not find that the word "sprite" referred to in the definition of "spright" is in the vocabulary of Defendant's dictionary at all? A. It appears not.

6679

x Q. 513. And the same is true of Webster's New Century. Therefore it would appear that the meaning of "spright" cannot be ascertained from Defendant's Dictionary? A. No, it does not give the cross reference does it?

x Q. 514. No. Is that a Websterian characteristic? A. No, that is not Websterian.

x Q. 515. It is not a Websterian characteristic to define words in that manner? A. Nor to spell them so.

6680

x Q. 516. Is it at all common in Defendant's Dictionary to use words in the definitions that are not defined in the main vocabulary? A. No, it is not at all so. It is not a characteristic; it is just like the rest of an ex parte action. Take the exhibition of a case where you can pick out a few things. You can do that in Webster.

x Q. 517. It not infrequently occurs in Defendant's Dictionary, however, and you know it to be a fact that it does occur, does it not? A. It does occur. In the 1847 Webster, they offered one dollar for every misprint or mistake. Caleb Cushing sent them in a list of over 40,000.

Prof. Harry Thurston Peck—Cross.

6681

MR. HALE: All of the witness's answer referring to the 1847 edition being the concluding portion thereof is objected to as not responsive, and hearsay, and irrelevant, and motion is made to strike it out.

x Q. 518. It was Webster's theory and practice where he inserted both the American and English forms of spelling words to define the term under his preferred American form, was it not? A. Yes. 6682

x Q. 519. Has the defendant in its dictionary in this case followed that principle? A. Well, the defendant in this dictionary has not distinguished, that is to say, it does not give both spellings, or only sporadic words, it might be in scattering instances, but Webster went right along and gave a great many English spellings. Now, there are not such a great many English spellings in the defendant's book. 6683

x Q. 520. What is the Websterian spelling of the word "Cauldron?" A. Well, he got it down to "caldron."

x Q. 521. What was the English spelling of it? A. "Cauldron."

x Q. 522. Webster defined the word under "caldron?" A. Yes.

x Q. 523. In defendant's book I find the entry "caldron;" see "cauldron;" and under "cauldron" I find the term defined. Was that a Websterian practice? A. No. But that word "cauldron" is one word that Webster did not impose upon people. You find as many people writing "cauldron" as you will writing "caldron." 6684

x Q. 524. In defendant's book I find the word "radicel" defined as "a rootlet." A. That is a misprint.

6685 *Prof. Harry Thurston Peck—Cross.*

x Q. 525. It should be spelled how? A. "Radicle."

x Q. 526. Defendant's spelling then is an error? A. It is a typographical error.

x Q. 527. Under "rootlet" in defendant's dictionary I find it defined as "a radicle?" A. Well, the initial mistake was made by some one.

6686 x Q. 528. And repeated? A. Well, it was repeated. It defines it really under "radicle."

MR. CARROLL: It appears also defined "radicle" and it is defined also under the latter spelling.

x Q. 529. We therefore find aside from the error in spelling that defendant's dictionary defines "radicle" as "a rootlet," and then defines "rootlet" as "a radicle." Was that Websterian? A. That is hardly Websterian.

6687 x Q. 530. Was it scholarly? A. No, it is not scholarly.

x Q. 531. Was it slovenly? A. It was slovenly.

x Q. 532. Does it occur in defendant's book that words are spelled differently in the definitions than they are in the vocabulary entries of the same word? A. I don't know.

x Q. 533. Would that be Websterian if it were true? A. Hardly.

6688 x Q. 534. For example, I notice that the word "pundit" is defined as "brahmam," and I notice in the vocabulary that the latter word is spelt "brahmin"? A. Yes. Well, both spellings are correct.

x Q. 535. Is it Websterian to have inconsistent and various spellings with no warning? A. Not to my knowledge at all. That shows I think a different number of men had worked on the thing;

one man doing a certain part and another man doing another part.

x Q. 536. Is the phrase "Adam's ale" a noun? A. Well, now, that is a case. Of course, "ale" is a noun and "Adams" is a noun, but "Adams ale" is a phrase, could only be a noun in the way which I have already illustrated.

x Q. 537. The same would be true of "Adams apple"? A. Now, what most lexicographers would do would be to put down "Adam" and have under "Adam" the word "ale" as a subordinate.

6690

x Q. 538. Which is the correct way of doing it? A. Yes.

x Q. 539. And it is incorrect to afford the misinformation that a phrase is a noun? A. Yes, but that you will find in a great many dictionaries, the use of phrases as nouns.

x Q. 540. Whatever it may be in other dictionaries it is not Websterian? A. Yes.

6691

x Q. 541. Are the phrases, "improper fraction; inclined plane," nouns? A. No.

x Q. 542. The same is true as to "zymotic diseases"? A. Yes.

x Q. 543. It is an error for Defendant's dictionary to designate that phrase as a noun? A. Well it is not Websterian. I will say that.

x Q. 544. The same thing would be true of "joint stock company"? A. Yes.

6692

x Q. 545. What is the Websterian preferred form of the word "banyan," the name of a tree? A. That I understand to be the preferred form in Webster.

x Q. 546. What is the British form? A. The British form is sometimes that and sometimes "banian," but I think "banyan" with the "y" is the preferable form anyway.

6693

Prof. Harry Thurston Peck—Cross.

x Q. 547. In Defendant's dictionary under "banyan" I find "see banian," and under the latter form I find the word defined. That is not Websterian practice? A. No.

6694

x Q. 548. We have referred to the word "caldron" where the same thing occurred, did we not? A. Yes, only I filed a caveat there that you should not take "caldron" as established by Webster at all. I say that Webster used it, or the Merriam's use it, but the other spelling is just about as common. He did not get all his things in any more than simplified spellers have done.

x Q. 549. What is the Websterian form of spelling the word "despatch"? A. Well, as I remember he spelled it—I am afraid he spelled it "dispatch."

x Q. 550. What is the English form of spelling that word? A. "Despatch."

6695

x Q. 551. What is the form in Defendant's dictionary? A. I cannot tell you, but there I file another caveat to the effect that people generally are very much mixed up on those two words.

x Q. 552. In defendant's book I find this entry "dispatch; same as despatch", and under the latter form I find the word defined. A. Under the form "despatch".

6696

x Q. 553. Is that Websterian usage and practice? A. Well it is not Websterian usage to define a word under the form that it is not preferred under but I think that you can hardly cavil much at that.

x Q. 554. Was not this one of the words upon which Webster laid a special stress as to the form in which it should be spelled? A. Well, if so, he was correct. I don't recollect anything he said about it. That is a difference in English and American usage really.

Prof. Harry Thurston Peck—Cross.

6697

x Q. 555. And the defendant in this instance had followed the English usage? A. Yes, but one is as good as another.

x Q. 556. In Webster's introduction which has been offered in evidence as "Defendant's Exhibit B" with Harry Thurston Peck's affidavit, I find under the head "orthography" in paragraph No. 13 on page LVIII. a discussion of the proper spelling of the word "despatch." It would appear then that this defendant's editor had ignored the Websterian views as to that word at least? A. It does so appear.

6698

x Q. 557. What is the Websterian form of spelling the word "cartographer"? A. He spells it "car."

x Q. 558. What is the preferred English spelling of that word? A. "chartographer" but that is also used, the "carto" is undoubtedly the proper form.

6699

x Q. 559. What is the preferred English form? A. The preferred English form if you take the highest authority is "chartographer."

x Q. 560. Which is the preferred form in the Websterian dictionary; the American or the English form? A. I fancy it is the English. There are some things in the matter of spelling that are English.

x Q. 561. Does the Defendant follow the Websterian or the English form of the spelling of the word "fecal"? A. Well, he follows "foecal" I think the diphthong. As a rule Webster knocked out most of the diphthongs where he could and the defendant has not done that.

6700

x Q. 562. The same thing applies to the word "fetal"? A. Yes.

6701

Prof. Harry Thurston Peck—Cross.

x Q. 563. And "fetus" also? A. Yes.

x Q. 564. There are a number of that class of words? A. Yes, that class of word, which were more scientifically spelled with the digloss and more crudely spelled without, but an officer while he is Websterian I don't think his Websterianism ought to extend to his spelling necessarily. That is, I consider that a minor point only. I think he should be consistent.

6702

x Q. 565. All of those last three words I find entered in Defendant's book as follows: "foal, fetal and fetus" followed by some reference to "faunal, fontal and fontus." That is not the Websterian mode of treatment? A. That is not the Websterian orthography, no. It is more correct, though.

6703

x Q. 566. Do you mean to say the Websterian spelling is not at all important in a Websterian Dictionary? A. Why, consistency is always important if a book is Websterian, what you mean by the Websterianism is mainly the definition; but the spelling is also important because it is the schools where these books are used.

x Q. 567. Which is the American or Websterian form of spelling the word "anous"? A. "Anous."

x Q. 568. What is the English form of the same word? A. I don't know a different form from that.

6704

x Q. 569. Is it not "anous"? A. Oh, yes, they do that all through. The English form of "an" is half the time "en" like "enclous" and "enclous"; Webster prefers the "i".

x Q. 570. What form, Webster or English, did the defendant follow in this case? A. If you will tell me I will agree to it. I suppose "anous."

x Q. 571. I find the entry in this book "anous";

Prof. Henry Thornton Fisk—Dr. Hurd.

2753

more so others.¹⁷ A. That is Websterian enough; Webster always gives the English spelling besides the others.

Q. 372. But in such instances he gives the more treatment under his preferred form of spelling? A. Yes, that is true.

Q. 373. Do you have here many instances of that class which are in Webster's Dictionary? A. No, I have not counted them. I suppose, however, it might be a very large number. Perhaps you can tell me.

2754

Dr. Hurd: I think that is all.

Dr. Hurd's Comments by Dr. Hurd:

Dr. H. Q. 374. These examples taken from Webster's books by consent for comparison, and some of which you have indicated were examples of English spelling preferred to American spelling and were before you, even they not, when you made up your mind as to the rights of this book?

2755

Dr. Hurd: Objected to as preferred and immaterial.

A. Yes. The rights in Webster, you know, you.

Dr. H. Q. 375. Did they weigh in your mind against the other witnesses of the rights of the book? A. No, they did not, because witness of the distinction from Dr. Johnson have been often and continuously offered their personal preference to prevail over constitution. You know Dr. Johnson used to make his objections, especially to did not like, or any class of people to did not like, he would rather than to such a day as would make them seriously angry.

2756

Dr. H. Q. 376. Is after that, of those authors

6709

Prof. Harry Thurston Peck—Re-direct.

preferred English spellings found in defendant's book you nevertheless are still of the belief that the book is based on Webster?

MR. HALE: Objected to as irrelevant and immaterial.

6710

A. I am of the belief that more than one hand has worked upon this book; that it was compiled first by someone from Webster's dictionary, that it was altered and revised by someone else who had not consistency in mind and departed somewhat from the Websterian consistency, spelling particularly, the few errors and cross references you find in some of our largest and most important standard works, like the New International Encyclopedia, and the Standard Dictionary, and the Century Dictionary, you find instances in all them showing certain carelessness. In a book, perhaps hastily made, but still a large number of words. It is very natural. I don't think it is any reflection on the book.

6711

Re-D. Q. 577. I understood you to say in cross examination that you would stake your reputation on the statement that this defendant's dictionary is derived from Webster's Dictionary?

MR. HALE: Objected to as incompetent, irrelevant, immaterial and highly improper.

6712

A. Yes. That is, in some way; I don't just say how. But, yes.

Re-D. Q. 578. What do you mean by "in some way?" A. That is to say I don't profess to know whether this compilation was made by an Englishman and then Americanized or whether by an American and then Anglicized.

Prof. Harry Thurston Peck—Re-direct.

6713

Re-D. Q. 579. Do you mean what you have just said. Go on. A. I don't know absolutely whether it came out of Bond's book or whether it was made by Mr. Roe in other words.

Re-D. Q. 580. Have you compared the book carefully with Bond's book? A. Yes.

Re-D. Q. 581. Is it your opinion, that it is based on Bond's book? A. No, it is not my opinion, but it is possible.

R-D. Q. 582. What is your best belief in the matter?

6714

MR. HALE: Objected to as incompetent, irrelevant, immaterial and asking for facts not within the knowledge of the witness.

A. My best belief in the matter, speaking seriously, is that it was compiled by an American and has been subsequently altered and revised also by an American, which accounts for a certain inconsistency in it, but that it was taken directly from the 1847 Webster.

6715

R-D. Q. 583. And it is your best belief that it has no connection whatever with Bond's book? A. That is my best belief, yes.

R-D. Q. 584. I have understood you to say that you considered it as simple as a mathematical sum like adding two and two to discover from the defendant's book and a comparison of it with the 1847 Webster that defendant's book is based on the 1847 Webster?

6716

MR. HALE: Objected to as incompetent, irrelevant, immaterial, as an improper summary of the witness's testimony and as highly objectionable and leading.

6717 *Prof. Harry Thurston Peck—Re-direct.*

R-D. Q. 585. Is that summary exactly correct?

A. Yes.

R-D. Q. 586. This book of Bond's that you speak of, have you compared that with the 1847 Webster? A. No, I compared it with these books, having already compared these with the 1847 Webster.

6718 R-D. Q. 587. When you compared Bond's book with these books, did you have all of the characteristics and the detailed spellings and definitions of Webster's 1847 Dictionary sufficiently in mind to be able to state whether or not the Bond book was largely if not entirely based upon Webster?

6719 MR. HALE: Objected to as incompetent, irrelevant, immaterial, as calling for the contents of a printed book not produced and not subject to comparison and as to which the accuracy of the witness's testimony cannot be tested by cross examination.

6720 A. Yes, I had a very strong impression that Bond's book was not derived from these because it was of a very different character while showing that its original source must have been Webster's source. It was very colorless in its character; that is to say, it was a word-book rather than a semi-encyclopedic book, and furthermore it was differentiated from these by having all the spellings and all the definitions you might say obviously English. There was no trace of Americanism in the book except the fact that it resembled the 1847 Webster; got his words and his definitions so far as they corresponded with English definitions.

R-D. Q. 588. When did you make this com-

Prof. Harry Thurston Peck—Re-direct.

6721

parison of defendant's book with the various small dictionaries and with Webster's 1847? A. In August, September and October of 1911.

R-D. Q. 589. At that time you had no knowledge or information of any litigation such as that in which the testimony is now given? A. I had no definite knowledge about it. I knew that the Merriam Brothers had sued various dictionaries, but there was no concrete definite thing in my mind at all; I did not know any of the people-connected with it.

6722

R-D. Q. 590. Did you make that investigation for the purpose of this suit?

MR. HALE: Objected to as irrelevant and immaterial.

A. No, not in the least.

R-D. Q. 591. You have stated that it is possible that defendant's books may have been based on the Bond's book. If that fact was so would you still say that they are based on Webster?

6723

MR. HALE: Objected to as incompetent, irrelevant, immaterial, as calling for the opinion and conclusion of the witness upon a hypothetical state of facts not shown to exist, and further because the witness's opinion as to possibility is not evidence.

A. Yes.

6724

R-D. Q. 592. Why do you say this? A. Because when marking I read every word in, say twenty pages, taken at random in Bond's, in marking the identities between the 1847 Webster and Bond's, almost every definition, every single word of a definition is identical with the Webster.

6725 *Prof. Harry Thurston Peck—Re-direct.*

MR. HALE: Are you referring now to the Bond book?

THE WITNESS: I am referring now to the Bond book.

R-D. Q. 593. So that anything based on the Bond book is really based on Webster? A. Yes.

6726 R-D. Q. 594. Somewhere in the early part of cross examination you spoke of some advertising which had made the name Webster known. Whose advertising did you refer to?

MR. HALE: Objected to as not properly re-direct, and as incorrectly stating the testimony of the witness upon cross examination.

6727 A. I know positively from observation that a great deal of advertising has been paid for and published in the papers by the Russell's book, which is published by the Saalfeld Company, but more particularly do I know that it is true of the Syndicate Publishing Company, which has often taken whole pages of very important and widely circulated newspapers. They would have to pay a thousand or two thousand dollars for an advertisement, and that is going on week after week and month after month. I suppose they must have spent, and I know they spent, over one million dollars advertising; I know it and I have seen the advertisements and I have seen the man making them.

6728

R-D. Q. 595. In what respect has dictionary scholarship advanced since Webster's time? A. Most of all in the etymology, and more, perhaps as much, in the thread and scope of the vocabulary. For example, the Webster of 1828, that bulky book, had only twelve thousand words in

Prof. Harry Thurston Peck—Re-direct.

6729

it as a vocabulary. One of these books, my book, the New Websterian, has thirty-five thousand. And I will give as an example the Standard Dictionary, the Century Dictionary, and this great dictionary that is being prepared in England, the object being to get in all the words in the language, good, bad, low, high and of every degree.

R-D. Q. 596. Changes in etymology would not of course appear in an abridged dictionary at all, would they? A. No. They might. Etymological changes, you mean. No, they would not come into an abridged dictionary. You might find classes of words, with an indication of their origin, whether Latin or French, or Spanish or something of that sort, but the great changes of etymology subsequent to 1870 would appear only in an unabridged dictionary; there would not be anything about them in an abridged dictionary; in an abridged dictionary the readers would not be able to understand them.

6730

6731

R-D. Q. 597. On cross examination you stated that you somewhat preferred the title Websterian to the title Webster. Does that preference apply as a title upon the Merriam books, as well as for defendant's books?

22

MR. HALE: Objected to as irrelevant and immaterial.

A. You mean that I think the Merriam books—if I were one of their editors I would advocate changing it to Websterian? I did not quite get the drift of that question.

6732

R-D. Q. 598. (Question repeated)? A. Why, yes; that is to say, if I had to choose a title I would choose "Websterian" rather than "Web-

6733 *Prof. Harry Thurston Peck—Re-cross.*

ster's," because there are no longer any Webster's books in the strict sense.

R-D. Q. 599. Do you consider the special cases picked out by Mr. Hale from Exhibit C— A. (Interposing.) Of the vertical bar—

R-D. Q. 600. —as fairly representative of that exhibit? A. I think they are grossly unfair.

6734 MR. CARROLL: Defendant's counsel, because of the lateness of the hour, and because he considers properly that the exhibit speaks for itself, does not request the witness to select any examples which he considers more representative.

RE-CROSS EXAMINATION by Mr. Hale:

6735 R-x Q. 601. You stated just a moment ago that there are no longer any Webster's Dictionaries in the strict sense. Just what did you mean by that? A. I meant made by Webster himself.

R-x Q. 602. You stated that you have seen men making advertisements of Webster's Dictionary. To whom did you refer? A. Yes. You mean the Syndicate Publishing Company's Book? Yes.

R-x Q. 603. Where did you see them making those advertisements?

6736 MR. CARROLL: Objected to as incompetent, irrelevant, immaterial and not within the knowledge of this witness, and as hearsay.

A. They had a special room for the man that has the making of the advertisements, that is drawing the posters and that sort of thing to be put in the newspapers, and introducing them in the office of the Syndicate Publishing Company.

R-x Q. 604. Who did you see making them; em-

Prof. Harry Thurston Peck—Re-cross.

6737

ployees of the Syndicate Publishing Company?

A. Yes, and as to my knowing about what they were, I can read.

R-x Q. 605. You referred to advertisements of Russell's book. Do you mean the book— A. There is a larger Russell's book of which I don't know the name, larger than this, but it is one of the Saalfield books; it is a very good book, too, of its kind.

6738

R-x Q. 606. Do you know that Saalfield is the defendant in a suit? A. No; I don't know anything about Saalfield at all.

R-x Q. 607. You do not know then that the Circuit Court of Appeals in the Sixth District has directed an injunction against Saalfield because of his manner of using the name of Webster's upon his books and advertisements? A. I never heard it. I did not know that he had any litigation at all; I only knew him by this little Webster here.

6739

R-x Q. 608. Did you actually compare the book which we have referred to as the Bond book with the Webster 1847 edition? A. No, I said that I compared it—with the two books in question, in the suit, after having compared them with Webster's, but immediately after, so that Webster was very fresh in my mind, and then I further answered, if you recollect that I had a certain opinion about the Bond book. That is on the record.

6740

R-x Q. 609. You stated that you believed Defendant's book had no connection with the Bond book. Was that belief based upon the differences or the similarities which you observed between them? A. Based on the differences, rather on the inherent improbability that they would go to work and take the Bond book and do all the work

6741 *Prof. Harry Thurston Peck—Re-cross.*

necessary to Americanize it, when they could go straight to Webster and make their own abridgement.

6742 R-x Q. 610. Which do you think is the safest basis for an opinion in the comparison of two books; the differences or the similarity which existed between them? A. That raises a great old philosophical question. I won't discuss it though, but it raises the question of analogy and anomaly. Let me think a moment to see whether I am an anomalist or an analogist. I think it all depends on the amount of difference or resemblance; for example, if a book had ninety percent like Webster and ten percent otherwise, I would say it was taken immediately from Webster's. If it was fifty percent Webster's and fifty percent not Webster, I would say that Webster did not necessarily claim much part in it, but it was properly taken from some other source, and used in connection perhaps with Webster.

6743 R-x Q. 611. And if there was a common source from which the similar or identical matter could have been derived, but all the differences were followed, then upon what would you base your opinion; the similarities or the differences? A. That is as to two books?

6744 R-x Q. 612. Yes? A. I would decide it rather by the similarities. You take an example, the Bond book, I answered that question really, it is the dissimilarity in the Bond book that makes me think that that is not a common source for the others.

R-x Q. 613. If, for example, the Bond book contained many departures and variations from Webster's book, as well as many similarities, and the Defendant's book in addition to having the com-

Prof. Harry Thurston Peck—Re-cross.

6745

mon similarities also followed many or the great majority of the variations in the Bond book, would you say then that in your opinion it had been based upon the Bond book? A. I should, but such is not the case.

R-x Q. 614. That remains to be seen when we are able to find and produce the book called the Bond book? A. Yes, I say that provisionally of course, but I have gone all through the Bond book, and I know what I am saying. You will find the same thing.

6746

MR. HALE: Defendant is called upon to produce a copy of the book referred to as the Bond book, which this witness has testified was placed in the possession of someone connected with the Defendant.

THE WITNESS: Make it a little more distinct and say "sold in this City by Charles Scribner's Sons."

6747

MR. HALE: That is all.

MR. CARROLL: That is all.

DEPOSITION CLOSED.

(Signature of witness waived by consent.)

(Further hearing adjourned to Friday, June 21st, 1912, at 11:00 A. M.)

6748

6749

Joseph J. Little—Direct.

NEW YORK, Friday, June 21st, 1912,

11 o'clock A. M.

Met pursuant to adjournment.

Present: Counsel as before.

6750

Adjourned to Tuesday, June 25th, 1912, at
11 A. M.

Met pursuant to adjournment.

Present: Counsel as before.

JOSEPH J. LITTLE, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

6751

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. State your full name, please? A. Joseph J. Little.

Q. 2. Age? A. 71.

Q. 3. Residence? A. 47 West 68th Street.

Q. 4. And occupation? A. Printing and binding.

Q. 5. What company are you now connected with? A. J. J. Little & Ives Company.

6752

Q. 6. What is the address of that company? A. 425 to 435 East 25th Street.

Q. 7. What is your connection with that company? A. I am president and treasurer.

Q. 8. Have you ever been connected with the Commission of Education in this city? A. I was a member of the Board of Education.

Joseph J. Little—Direct.

6753

Q. 9. Were you connected with the Board of Education in any other capacity? A. Than that?

Q. 10. Than simply member? A. I think you will have to make yourself a little clearer than that. All members serve committees or are officers or something of that sort.

Q. 11. Now, have you been president of the Board of Education? A. I have, of the City of New York, the greater city, since consolidation.

6754

MR. HALE: Would you mind putting in the date and the year?

THE WITNESS: 1899, 1900 and 1901, I think.

Q. 12. What does the term "Webster's dictionary" mean to you? Well, it means a book that is authority for spelling and so on.

Q. 13. Is it connected in your mind with any particular publisher? A. No, sir; there are quite a number of Webster's dictionaries in the market.

6755

Q. 14. What do you consider the most important basis of all of the Webster's dictionaries now on the market?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for a mere conclusion of the witness.

A. I do not think I could answer that question.

MR. CARROLL: Read the question again. It calls for what you consider.

6756

(Question repeated.)

Q. 15. What do you consider the most important basis of all of the Webster's dictionaries now on the market?

MR. HALE: Objection repeated.

Joseph L. Little—Witness.

A. They are all different more or less; therefore I do not see how I can give an answer as to the most important of all of them.

Q. 16. What right do any of them have to the name of "Webster?"

Mr. Hays: Objected to as incompetent, irrelevant and immaterial, as calling for the opinion and conclusion of the witness upon a question of law, and also as calling for matter not shown to be within the knowledge of the witness.

A. I understand that Noah Webster died many years ago—who wrote the dictionary—and its copyright has long since expired. Since that time many publishers have issued dictionaries, using largely from Webster's dictionary on which the copyright expired, but bringing it down to date, to the date of publication; using other words as being it down. You know that words being added constantly, those are words must appear in a dictionary to be of any value.

Q. 17. How did the Board of Education select dictionaries when you were connected with it? A. I do not think I was on that committee.

Q. 18. Nevertheless, as president of the Board, you had knowledge of it, did you not? A. I know there were several dictionaries put on the list. I think probably prior but something to the effect of.

Q. 19. Did you have the method of selecting the dictionaries? A. Yes; there was a system of selecting all the best books in the nation; publishers were asked to submit lists for books, and the prices at which they were to furnish them to the Board, as called for by the Board during the year. Then the publishers offered any books that

they would be—on might be accepted as existing, existing and so on, and then this one suffer both these even and finally decide whether they will be put on the list. Then the principle of every school here is right to select any words from the list that is made up; they are not supposed to take one particular book; they might as well from the list as submitted by the Board.

From Worcester by Mr. Hale:

[1934]

Q. 20. How long have you been aware of the similarity with Webster's dictionary? A. A great many years; probably 30.

Q. 21. What has been the reputation and standing of that book during that period as an authoritative dictionary for American use? A. Well, for a good many years that was Worcester's was the standard. A great many editions published as long as I can remember the Worcester's, and a great many preferred the Webster's.

[1934]

Q. 22. And what is the relative standing of those two books today, if you know? A. Well, I think the Webster's dictionary is more popular than the Worcester's. Worcester was never perfect. Every time it suggested and would not use or was often talked out of saying that and putting it, but it never came to a head.

Q. 23. What was the greatest and greatest of the American dictionary, in comparison to the Worcester dictionary? A. I did not refer to any publisher.

[1934]

Q. 24. I see, who has been the publisher of the Webster dictionary in which you referred in comparison to the Worcester dictionary? A. I do not think that was the way you asked.

6765

Joseph J. Little—Cross.

x Q. 25. That is the way I meant it. A. There have been many publishers.

x Q. 26. Name them? A. Well, Success Company published one; Ogilvie Company published one I am rather off on names. The company that this gentleman (referring to Mr. Carroll) represents published one.

6766

MR. CARROLL: The Syndicate Publishing Company, and Cupples & Leon.

THE WITNESS: There are others, but I do not recall them at this time.

x Q. 27. Did you ever hear of the Merriam Company? A. Yes, sir.

x Q. 28. Why didn't you mention their names? A. I have mentioned those that came to mind; I do remember it very well.

6767

x Q. 29. Do you not know that the dictionary which you say was published by Success Company was one of the Ogilvie dictionaries, and was merely used by the Success Company as a premium? A. I don't know it was published the same as the Ogilvie.

x Q. 30. You knew it was the premium book, however? A. I knew it was used as the premium.

x Q. 31. And don't you know that it was the Webster's Intercollegiate Dictionary copyrighted by Ogilvie? A. I didn't know that.

6768

x Q. 32. I presume you do not know that the Ogilvie books, including the book handled by the Success Company, are in litigation in the Sixth Circuit, and that an injunction against them has been directed? A. I do not.

x Q. 33. Did you ever hear anything on that subject? A. Well, I have heard there has been more or less litigation.

MR. CARROLL: I object to that question and answer and move that both be stricken out as incorrectly stating the facts.

x Q. 34. Will you please repeat again your view as to the right to use the name "Webster" upon dictionaries in the market to-day, to which you referred upon your direct examination? A. I do not think I commented upon any right of anybody.

x Q. 35. Mr. Carroll asked you as to the basis upon which the name "Webster" was used in the title of various dictionaries now on the market. A. I will ask to have my answer read.

6770

x Q. 36. I would like to have a re-statement of it in your own words, now, please? A. My understanding then was this:

Noah Webster originally compiled or wrote, as you choose to term it, a dictionary, and that copyright expired many years ago, and he is also dead, and any Webster dictionary published now containing later words and authorities, must naturally and necessarily be written by someone different from Noah Webster, and it is more or less a fiction to call it Webster's dictionary.

6771

x Q. 37. Is it your opinion that in order to be properly called a Webster's dictionary to-day, the book must contain some part of the matter contained in a dictionary written by Noah Webster? A. Yes, I should think so.

x Q. 38. And must be based upon that rather than upon some other lexicographer's work? A. Partially upon that, certainly.

6772

x Q. 39. And you do not think it would be proper to call a book Webster's dictionary to-day that had no connection with any of the books in the series of Webster's dictionaries? A. Not if that calling that name meant it was Noah Web-

6773

Joseph J. Little—Cross.

ster's, unless there are other Websters in the world; I say I would not think it proper to publish a dictionary giving the public the idea it was Noah Webster's, if it did not contain any part of what was in the original Noah Webster's dictionary.

6774

x Q. 40. Would you think it proper for a publisher to republish an English dictionary compiled by some Englishman, and change its name and call it the Webster's for American use? A. I have already answered that if it did not contain any of the Webster's words I would not think it was proper, unless the Englishman's name was Webster.

6775

x Q. 41. When you say in fact there are quite a number of Webster dictionaries on the market, do you mean to say that there are a number of dictionaries using the name "Webster" in the title upon those published by various publishers? Is that the whole of your meaning in that answer? A. I think it is substantially, but I think it also has a deeper meaning, as I have tried to explain. It is based on the Websterian principles originally laid down by him.

6776

x Q. 42. I presume you do not mean to say whether in any particular instance or in connection with any particular dictionary the name "Webster" has been properly used? A. I do not pass judgment on that at all.

x Q. 43. You have stated that several dictionaries were put on the list of approved books by the New York City Board of Education: What were those dictionaries by name, please? A. I do not think I can name them all. I think the Standard dictionary was put on. I think one or two different Webster's dictionaries were put on—

possibly three. I think Worcester's dictionary was put on, and I think the Century dictionary was put on.

x Q. 44. Do you know the name of the publisher of the Webster's dictionaries which were thus approved for use in the New York schools? A. I do not. I do not know either the name of the publishers of the Worcester.

x Q. 45. Have you any reason to believe that the Webster's dictionaries thus approved were in fact the dictionaries published by the G. & C. Merriam Company? A. I shouldn't be surprised of that, if I had that called to my attention.

6778

x Q. 46. Commissioner Draper, the commissioner of Education in this state, or in the State of New York, has testified in this case that the Merriam Webster's dictionaries are the only Webster's dictionaries approved for school use by the state authorities. With that information, are you able to state whether or not the books approved by the New York City Board of Education were the books published by the Merriam Company?

6779

MR. CARROLL: I object to that question on the ground that Mr. Draper has not so testified.

A. In the first place, Mr. Draper has not been always Superintendent of Schools in New York; he only came in towards the end of my term. Charles R. Skinner was the State Superintendent during a large part of my service.

6780

x Q. 47. I was merely trying to refresh your recollection. If it does not help, why, no matter. A. I am trying to give you the facts as they were.

x Q. 48. It does not refresh your recollection then upon that subject? A. Upon what?

Joseph J. Little—Cross.

6781

x Q. 49. Upon whether or not the Merriams were the publishers of the Webster's dictionaries approved for use in the Schools of the City of New York? A. I do not see that that has any connection about it; the New York School Board of Education is an independent board, buy their own books, and the City pays for them. The state does not pay for them at all. The New York City Board of Education does not have to submit the question of the books they are to use to the State Superintendent.

6782

x Q. 50. Do you know of the American Book Company as the publishers of Webster's dictionaries? A. No, I do not; I would not be surprised if they were, but I don't know it.

x Q. 51. Have you ever heard or seen the name of the American Book Company upon school abridgements of Webster's dictionaries? A. I do not think so.

6783

x Q. 52. You do not remember it, if you did? A. No, I don't remember it.

x Q. 53. In making up this list of approved books of all sorts by the Board of Education, did literary excellence have anything to do with the approval of the Board? A. Oh, yes, sir.

x Q. 54. The matter of price then was not the controlling consideration? A. Not wholly controlling.

6784

x Q. 55. The board would not approve an inaccurate book without any literary excellence merely because its price was cheap? A. Not at all, but it did frequently happen that two or three or even more publishers would offer the same book exactly at different prices. I am not speaking now of dictionaries.

x Q. 56. Are you the Mr. Joseph J. Little who

made an affidavit on behalf of the defendant in this case? A. I did make an affidavit.

x Q. 57. In this affidavit I find the following statement: "I am familiar with the following facts, viz: That Noah Webster died in 1843; that the Webster dictionary unabridged published in 1847 by G. & C. Merriam was prepared under the direction and supervision of Chauncey Goodrich, and that Webster's unabridged dictionary published in 1864 by G. & C. Merriam was prepared under the direction and supervision of Noah Porter." Is that statement correct? A. Yes, sir.

6786

x Q. 58. Which one of those books, if you know, was the book which was involved in the controversy with Worcester's dictionary some forty odd years ago? A. I don't know.

x Q. 59. You don't know anything about that controversy? A. No.

6787

x Q. 60. I am speaking now of a literary controversy among scholars and users of dictionaries as to which was the best dictionary, and not to any legal controversy? A. I don't remember; I know there was such a discussion, but I don't remember anything about its details, or who was involved or who were the disputants.

x Q. 61. But do you remember what were the books? A. It has passed from my memory.

x Q. 62. It was simply Worcester's dictionary on one hand and Webster's dictionary on the other as you now remember it? A. Yes. The question involved, as I remember it, was one of scholarship, but it is so long ago, it is entirely out of my memory.

6788

x Q. 63. Was it also somewhat a question as to whether the innovations or changes which

Joseph J. Little—Cross.

6789

Noah Webster wished to introduce should be accepted and followed to the extent that he desired to go? A. I don't remember.

x Q. 64. Are you at all familiar with a book known by the name of the "Crown dictionary"?

A. No, I am not.

x Q. 65. Never heard of it? A. Does that refer to the shape or to the entirely different authorship?

6790

x Q. 66. The name refers to the title of a book, a book published under the name of the Crown dictionary? A. No, I don't know it.

x Q. 67. You never heard of it? A. No.

x Q. 68. Is Edwin S. Ives a member of your company? A. Yes, sir.

x Q. 69. Were you a member of that company in or about the year 1904? A. No, that company did not exist at that time.

6791

x Q. 70. Were you a member of the concern of J. J. Little & Company, printers and bookbinders in the year 1904? A. I was.

x Q. 71. Do you remember anything about printing an edition of a book called the Crown dictionary at about that time? A. I don't remember it.

6792

x Q. 72. You do not remember anything about it at all? A. No; I don't know that I ever heard that name before you mentioned it, though I may have; we are preparing thousands of books right along.

x Q. 73. You have no knowledge or information whatever then as to a book called the Crown dictionary having been either printed or bound by the firm of J. J. Little & Company in or about the year 1904? A. I have no knowledge of it at all.

x Q. 74. Have you any information? A. No.

Joseph J. Little—Re-direct.

6793

x Q. 75. Have you discussed that matter with Mr. Edwin S. Ives at all? A. No, sir.

x Q. 76. At any time? A. Not that I recollect; I have said plainly that I do not remember having heard that name Crown before you mentioned it, though I added I may have, for we are printing hundreds and thousands of different books all the time; I cannot keep them in my mind.

x Q. 77. Do you remember anything about printing or binding a dictionary for Louis Klopsch, of the Christian Herald, in or about the year 1904? A. I know we printed books for Louis Klopsch, but I do not remember that title.

6794

x Q. 78. You do not remember anything about the details of a dictionary job? A. I do not.

x Q. 79. Done at that time? A. I do not. I have just thought of another dictionary that we print, and I think that is on the school list too, but I am not positive of it; the Clarendon dictionary, published by the University publishers.

6795

RE-DIRECT EXAMINATION by Mr. Carroll:

R-D. Q. 80. Mr. Hale has quoted to you from an affidavit which you made in this case. I also read from that affidavit—

MR. HALE: I object to counsel leading his own witness in that manner.

R-D. Q. 81. (Continued). "Since 1889 numerous editions of Webster's dictionaries, both complete and abridged, have been published by various houses. If based upon the work of Noah Webster, revised and brought up to date, they are as genuine as any Webster's dictionary published since the death of Noah Webster can be." Does that still represent your views?

6796

6797

Joseph J. Little—Re-direct.

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as leading.

A. It still represents my views.

R-D. Q. 82. I quote further from said affidavit—

6798

MR. HALE: Objection and protest is made against this incompetent and improper manner of examining counsel's own witness, and the further objection as not proper re-direct examination.

6799

MR. CARROLL: No mention was made of this affidavit by counsel for defendants in his direct testimony. The question of the affidavit was brought up for the first time in the cross examination and parts of it were quoted which appeared to counsel for complaint as favorable to his case. Counsel for defendant therefore deems it necessary to quote further parts, in order that the Court may not be under a misapprehension as to the contents of said affidavit.

6800

MR. HALE: The affidavit was admissible on cross examination, either to refresh the witness' memory, or to contradict his testimony, and it was used solely for that purpose. It is not competent for counsel with his own witness on the stand to read into the record the ex-parte affidavit of that witness.

R-D. Q. 83. (Continued). "The name Webster as applied to dictionaries is in such general use, and covers such a wide range in size of books, that any citation using merely the words 'Webster's dictionary' would be incomplete; to be complete it should contain the full title of the dic-

tionary from which citation is taken." Does that represent your views?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as leading, and as not proper re-direct examination.

Objected to further as calling merely for an opinion of the witness.

A. It does.

6802

R-D. Q. 84. You have stated on direct and cross examination that in making this selection of books or dictionaries, the Board of Education took into consideration literary excellence, and also price. Did the question of who published the books or dictionaries enter into the dispute at all?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

6803

A. Before I answer that I should like to ask a question of what you mean by publishers. Would the sale of the book constitute publishing in your mind?

R-D. Q. 85. This question contemplates as the definition of the word "publisher," the house from which the work originates? A. I do not think the Board of Education would take any cognizance of that if they can get the same book at a lower price from another.

6804

RE-CROSS EXAMINATION by Mr. Hale:

R-x Q. 86. In other words, it is the identity of the book, and not the identity of the publisher of it, that is considered by the Board? A. Yes; in connection with the price. For instance, if the American Book Company would sell a book pub-

6805

Joseph J. Little—Re-cross.

lished by the D. Appleton Company cheaper than D. Appleton & Company would publish it themselves, they would buy that book through the American Book Company because it would be cheaper.

R-x Q. 87. Is this affidavit to which reference has been made wholly in your own language? A. It represents my language and view of the situation.

6806

R-x Q. 88. Who drew it up and embodied it in the form in which it appears? A. I did that after consultation.

R-x Q. 89. You did not write out any part of it yourself? A. I dictated certain parts of it myself. In the first place I gave my views, and from that then that was put on paper, and submitted to me, and I corrected it accordingly to make it more exact with my views, and then written by the person who wrote it down.

6807

By Mr. Carroll:

R-R-D. Q. 90. As between two Webster's dictionaries, which were not identical, which were of equal literary excellence, would it enter into the discussion in choosing between them who was the publisher of either? A. How it would be decided—you rather beg the question there. You say were of equal value. I think you should say if in the judgment of the committee they were of equal value.

6808

R-R-D. Q. 91. I accept the amendment to the question as stated. A. Now, as amended let me hear what the question is.

MR. CARROLL: I withdraw that question, and the question as amended is re-read to the witness as follows:

Joseph J. Little—Re-cross.

6809

R-R-D. Q. 92. As between two Webster's dictionaries, which were not identical, but which were of equal literary excellence, in the judgment of the Purchasing Committee of the Board of Education, would it enter into the discussion in choosing between them who was the publisher of either? A. I do not think it would.

Deposition closed.

Signature of witness waived by consent.

6810

MR. HALE: Complainant's counsel inquires whether defendant's counsel is now ready to produce the books referred to by the witness Peck as the "Bond dictionary," as complainant would like an opportunity to inspect the same.

MR. CARROLL: Counsel for defendant has not been able to find said book, and is still making an effort to do so.

6811

Notice is hereby given that on Friday, June 28th, the testimony will be taken in Springfield at the office of the Special Examiner, John J. Jennings, at 11:30 in the forenoon.

Adjourned to Wednesday, June 26, 1912,
at 2 o'clock P. M.

6812

6813

Albert L. Swift—Direct.

Wednesday June 26th, 1912.

2:00 P. M.

Met pursuant to adjournment.

Present: Mr. Hale and Mr. Carroll.

ALBERT L. SWIFT, recalled as a witness on behalf of the defendant, testified as follows:

6814

DIRECT EXAMINATION by Mr. Carroll:

6815

Q. 1. Harry Picket, one of the witnesses called on behalf of Complainant, testified that on December 8th, 1911, he saw an advertisement in the New York American for a dictionary and that on December 9th, having cut coupons from the New York American, as directed by the advertisement, he purchased a dictionary from one of the American distributing agencies. He further stated that the clerk from whom he purchased the book answered that he supposed it was a genuine one and an original one. I show you an advertisement and ask you if you can identify that as an advertisement cut from the New York American of December 8th, 1911? A. Yes.

6816

Q. 2. Can you state whether or not that was the advertisement which was seen by Mr. Harry Picket? A. That was the first ad of the Fall campaign.

Q. 3. Does this advertisement contain the statement that the dictionary is not published by the original publishers of Webster's dictionary or by their successors.

MR. HALE: Objected to as secondary, the advertisement speaking for itself.

Albert L. Swift—Direct.

6817

A. Yes.

Q. 4. I show you also pages cut from the following newspapers, Newark, New Jersey Star, of October 20th; Springfield, Mass., Union, October 21st; Buffalo Evening News, October 21st; Grand Rapids Press of November 6th; Toledo Daily Blade of October 1st; Baltimore American of October 22nd; Flint Michigan Daily Journal of November 6th; the St. Paul Pioneer Press of October 26th; the Springfield Union of October 28th; the Milwaukee Evening Wisconsin of November 13th; the Wichita Beacon of October 30th; the Baltimore American of October 31st; the Manchester Union of November 7th; the Muscatine Iowa Journal of October 30th; the New Bedford Times of October 22nd; the Easton, Pennsylvania, Daily Argus of October 27th; Charlotte, North Carolina, Daily Observer of October 31st; Kansas City Journal of November 3rd; Houston, Texas, Chronicle of November 12th; Saginaw, Michigan, Courier Herald of November 14th; Lincoln, Nebraska, Daily Star of November 7th; Parsons, Kansas, Daily Sun November 7th and the Omaha Daily News of November 13th, and ask you if those are all advertisements inserted by the newspapers in connection with the campaign of the Webster's illustrated or New Standard Dictionary? A. Yes.

6818

6819

Q. 5. Does each one of these papers contain the notice "This dictionary is not published by the original publishers of Webster's dictionaries or by their successors"?

6820

MR. HALE: Objected to as secondary; the advertisements speak for themselves.

6821

Albert L. Swift—Direct.

A. Yes.

MR. CARROLL: These advertisements together with the one from the New York American before referred to, were filed in connection with the affidavit of James F. Johnson in opposition to the motion for a preliminary injunction, and are now offered in evidence for final hearing.

6822

(These advertisements, together with others, bound in one book, are marked Defendant's Exhibits, Newspaper Advertisements, June 26th, 1912, JAS., Exr.)

Q. 6. Did the newspapers which were handling this plan from time to time receive letters from purchasers of Webster's New Standard Dictionary or of Webster's New Illustrated Dictionary commenting upon the dictionaries? A. Yes.

6823

Q. 7. I show you eleven letters and ask you if those are letters received by the newspaper to which they are addressed in connection with the newspaper campaigns?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for matter not within the knowledge of this witness.

A. Yes, sir.

6824

Q. 8. How do you know that these are such letters? A. Some of them I received myself at the office of the newspapers when they came in, and the others I identify as having been received by me from the papers, to incorporate in their advertising.

MR. CARROLL: I offer these letters in evidence.

Albert L. Swift—Direct.

6825

MR. HALE: They are objected to as incompetent, irrelevant and immaterial, and as to those letters not received by the witness himself, as stated, the previous objection is renewed, that it is matter not within the knowledge of this witness; and further because relating merely to the merits or qualities of the book, which are directly in issue, and because the letters are not competent evidence as to the facts recited therein.

6826

(Subject to this objection they are by stipulation copied at length into the record, and read as follows):

“LOCKPORT, N. Y., Nov. 6, 1911.

Circulation Department,
The Evening News,
Buffalo, N. Y.

6827

Gentlemen.—Permit me to add my testimonial to the qualities of the Webster Dictionaries that you have just concluded offering at special rates. Although watching your ‘ad’ from the first insertion it was not until the last day in the afternoon that I availed myself of the opportunity to make a purchase of the \$4.00 book.

I deem the work, of its character, about as near the acme of literary genius as can be attained. It is so replete with excellent features that I find it extremely difficult to commend a single one as against another. The book should be in every home, particularly where wealth forbids the purchase of a variety of books. The updateness makes it particularly valuable to the youth just entering his educational career. The only pos-

6828

6829

Albert L. Swift—Direct.

sible criticism that could be made is the absence of a thumb index, but I'm sure anyone would overlook that when estimating its value along other lines.

Wishing you continued success, assuring you that I am thoroughly pleased and that you have made possible the step over the gap to an educative accomplishment for more than one person, I beg to remain,

6830

Very sincerely,
H. C. TOWNSEND."

"St. Louis, Post-Dispatch.
St. Louis.

Dear Sirs.—We received the Dictionary very promptly and are more than pleased.

6831 First and foremost on account of the "New and Unusual Words" with their "Up-to-date Definitions."

We are also pleased with its "Handy Size," "Beautiful Binding," "Clear Type," "Splendid Paper," "Synonyms and Antonyms," and the "Commercial and Legal Terms."

We cannot see what more could be asked in the shape of a handy Dictionary.

6832 We sincerely thank you for our copy feeling that it is worth many times its cost to us.

Gratefully,
A. J. MILLS,
Carrollton, Illinois,
R. F. D. No. 3.
October 5th, 1911."

Albert L. Swift—Direct.

6833

"October 4th, 1911.

Post Dispatch,
St. Louis, Mo.

Gentlemen:

I received to-day the New Standard Dictionary ordered Sept. 30th, and am well pleased with same. It is all that you represent it to be.

6834

Yours truly,
R. J. ABERNATHY."

"Crocker, Mo., October 2nd, 1911.

St. Louis Post-Dispatch.

Dear Sirs:

I Rec. Dictionary all O. K. It is fine. Would not take five dollars for mine if I could not secure another. Many thanks for prompt reply.

6835

Yours truly,
DR. A. J. WOODIN."

"Unionville, Md., Mar. 12, 1911.

Baltimore American,
Baltimore, Md.

Gentlemen:

6836

I wish to thank you for the handsome dictionary just received for \$1.20. It is far beyond my expectations. I think I appreciate most the new words and full definitions. In the old dictionaries so often I was unable to find new words and their meanings.

Yours truly,
EDGAR A. MORRIS."

6837

Albert L. Swift—Direct.

"Romney, W. Va., Oct 17, 1911.

The Circulating Department,
Baltimore American,
Baltimore, Md.

Gentlemen:

6838

Having seen a copy of the \$4 Webster's New Standard Dictionary in the hands of another, I was so much pleased that I immediately applied for one, and the same has just been received.

The feature of it which appeals to me especially is the immense fund of useful information in so compact and convenient a form. It now fills a space on my desk to my entire satisfaction; and I am quite sure I would not accept \$4 for it, if I could not procure another.

Yours very truly,

6839

WM. N. BAIRD, Mgr."

"Albion, N. Y., 11/6/1911.

Circulation Dept. of 'The Buffalo Evening News,'
Buffalo, N. Y.

6840

For the small sum of ninety-eight cents I have received a copy of 'Webster's New Standard Dictionary.' It is impossible to specify any one of its many valuable features, as the whole is so beautiful and contains so much more information than one could reasonably expect for the trifle asked for it. I am pleased with it and greatly appreciate the favor of receiving so much for almost nothing.

Respectfully yours,

L. A. MARKHAM."

Albert L. Swift—Direct.

6841

“Associate Congregational Church,
Baltimore.

General Felix Angus.

Dear Sir:

Allow me to congratulate the *Baltimore American* and the *Baltimore Star* on the great opportunity that they are giving the people of Baltimore in the remarkable offer of the New Standard handy volume of the *Webster Dictionary*. This is not merely fine business advertisement; it is also public philanthropy, such as every citizen should appreciate. I have just secured two copies for my boys, and am astonished at the wonderful volumes that they are for the money. *It is almost unbelievable that so much can be given for so little.* I wish every family in Baltimore, and especially every school child, could have a copy. With its illustration, and extra matter, it is *a liberal education in itself.*

6842

6843

With best regards,

Very Sincerely Yours,

12 September, 1911.

OLIVER HUCKEL.”

“Clifton Forge, Va.,
November 12, '11.

6844

The Circulation Dept.,
Balto. American,
Balto., Md.

Gentlemen:

I rec'd the “Websters New Standard Dictionary Sept. 10th, 11, and since then it has been in

6845

Albert L. Swift—Direct.

constant use by some one in the family, and the best I can say of this book is the unusual interest my son has taken in it who is 14 years of age and going to school. I gave it to him, and he has said often he would not sell it for \$10.00. He also said he got more and quicker information out of it than all my other Dictionarys and encyclopedias of which I own several.

6846

Every parent, who has children going to school, ought to have this book in the house; it will pay for itself many times in Mental thought alone.

Very Truly Yours,
LOUIS F. WOLFES."

No. 345 R'way St.,
Clifton Forge, Va.

"Washington College,
Chesterton, Md.,

6847

Oct. 17, 1911.

The Baltimore American,
Baltimore, Md.

Dear Sirs:

6848

I beg to acknowledge the receipt of your dictionary which I sent for a few days ago, and after looking it over I am frank to admit that it is the cheapest book that I ever bought in my life. It is surely worth three times its cost without any exaggeration whatever. I thank you many times over for your kindness. I find it very useful indeed.

Shall not forget to spread abroad your merits.

Very sincerely yours,
OLLIE H. CONNELLY."

Albert L. Swift—Direct.

6849

“Pungoteague, Va.,

Oct. 26, 1911.

The Baltimore American,
Baltimore, Md.,

Gentlemen:

I have just received the copy of Webster's New Standard Dictionary in flexible leather binding, through the coupon offer in your paper. I am amazed at its beauty and comprehensiveness. It is well worth the value you claim for it—\$4.00, and I thank you cordially for the offer which gives it to your subscribers at the absurdly low price of 98c. 6850

Sincerely yours,

NELL BATAILLE HIDEN.

(Mrs. J. H. Hiden).”

Q. 9. Are these all of the letters so received by the newspapers? A. No, sir. 6851

Q. 10. Are they a large part of the letters received by the newspapers? A. No; a very immaterial part of the letters so received.

Q. 11. Are they typical of the letters so received? A. Yes.

Q. 12. Where they picked at random from those received by the newspapers? A. Yes.

Q. 13. I show you three pages cut from newspapers as follows: from the Buffalo Evening News, October 16th, 1911; from the St. Louis Post Dispatch, October 22nd, 1911; from the Baltimore American, October 26th, 1911, and ask you if those advertisements all refer to the book of the defendant, the Syndicate Publishing Company? A. Yes. 6852

6853

Albert L. Swift—Direct.

Q. 14. Does each one of those advertisements contain the statement "This dictionary is not published by the original publishers of Webster's Dictionary, or by their successors?" A. Yes.

MR. CARROLL: I offer these in evidence; and they are included in the bound volume of newspaper exhibits.

6854

Q. 15. I call your attention in these advertisements to certain letters which are set forth at length thereon. Do you know of your own knowledge whether or not those letters were actually received by the newspapers as stated in the advertisements? A. A portion of them I do.

6855

Q. 16. What portion do you mean? A. The Post Dispatch; those that are in the Buffalo Evening News and in the Baltimore American were sent to me by the publishers of those papers to be incorporated into an advertisement for them, as letters having been received by them.

Q. 17. Then you actually saw the original of each one of the letters contained in these advertisements? A. Yes.

6856

MR. HALE: The contents of the published letters referred to are objected to as incompetent, irrelevant and immaterial and not properly identified, the witness saying that he has merely hearsay information upon the subject, and further because the letters are not competent evidence of the truth of the facts recited therein.

Q. 18. Did you have in your employ a man named Murphy? A. Yes.

Q. 19. What was this man's full name? A. J. F.

Albert L. Swift—Direct.

6857

Q. 20. When did you have him in your employ?

A. In the Spring of 1911.

Q. 21. On what business was he engaged? A. On our dictionary work.

Q. 22. What particular work did he do while he was with you? A. We sent him to Pittsburg to learn the full campaign there before bringing him into the office.

Q. 23. Was the Pittsburgh Post at that time running one of the newspaper campaigns? A. Yes. 6858

Q. 24. And how long did he stay in Pittsburgh studying the system there? A. Five or six weeks.

Q. 25. Then, what did he do? A. Then we brought him into the office to start him out on getting business for us.

MR. HALE: Complainant's Counsel cannot see the relevancy of this, but does not wish needlessly to object if anything relevant is to be offered. 6859

MR. CARROLL: Defendant's Counsel expects that the relevancy will appear in a minute.

Q. 26. Did he go out on the road as expected by you to make further connections with newspapers? A. No sir.

Q. 27. What did he do? A. He stayed in the office less than a week and told me he had decided to quit. 6860

Q. 28. Did he quit? A. Yes.

Q. 29. When did you next see Mr. Murphy? A. Within two or three weeks I met him in Detroit, in a hotel.

Q. 30. For whom did he say he was working then? A. He said he was working for the Merriams.

6861

Albert L. Swift—Direct.

Q. 31. What was he doing for them? A. Endeavoring to get newspaper contracts on the dictionary plan with a condensed dictionary published by Merriam.

Q. 32. Did he succeed in introducing the condensed dictionary in Detroit? A. No.

6862

MR. HALE: This entire line of examination is objected to as incompetent, irrelevant and immaterial.

Q. 33. Did he introduce the condensed dictionary of the Merriams in any of the cities of this country? A. Yes.

Q. 34. What ones, if you remember? A. The first one I noticed, I believe, was in Albany, the Times Union.

6863

Q. 35. Any others? A. The Ohio State Journal, Columbus. I also recall the St. Louis Republic. I don't remember any more. He was out on an Omaha paper, but I have forgotten what it was,—quite a number.

Q. 36. Were the newspaper campaigns carried on by these newspapers in connection with the condensed dictionary originated by you referred to, by the Pittsburg Post?

6864

MR. HALE: I object to that as incompetent, irrelevant and immaterial and calling for a mere conclusion of the witness, and as not the best evidence. The advertisements issued in the course of the campaign inquired about being the best evidence of how it was carried on.

A. Yes.

Q. 37. Did the newspapers which carried on the campaigns in connection with the Merriam Web-

Albert L. Swift—Direct.

6865

ster's Condensed Dictionary copy the advertisements which had been originally used by the Pittsburgh Post?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as not the best evidence, and wholly secondary. Any similarity between the advertising matters inquired about can only be shown by the production of such advertisements. It is further objected to upon the ground that the Merriam Company has been in no way connected with such advertising matter, but as a matter of fact has nothing whatever to do with it. 6866

A. Yes.

Q. 38. And they also copied the general scheme—that is to say, books given in return for a nominal amount of money and coupons clipped on consecutive days from the newspaper. 6867

MR. HALE: The same objection; and by consent this objection is to apply to the entire line of examination in regard to the sale of Webster's condensed dictionary through the newspapers.

A. Yes.

Q. 39. Did the newspapers carrying on the campaign in connection with the Merriam Webster's Condensed Dictionary also copy the system of the front page reading notices? A. Yes. 6868

Q. 40. And the text of such notices?

MR. HALE: I object to it upon the grounds already reserved, and upon the further ground that it assumes the Merriams copied the system of advertising by

6869

Albert L. Swift—Direct.

means of reading notices, which is an old established practice, not originated by the Syndicate Publishing Company, but used by the Merriams long before the Syndicate Publishing Company published any dictionary.

A. Yes; and the text of such notices.

6870

Q. 41. Did you come in close contact personally with any of the newspaper campaigns carried on in connection with the Merriam Webster? A. Yes, sir.

Q. 42. Did any newspaper carry on a campaign in connection with the dictionary of the Syndicate Publishing Company in the same city in which the Merriam Webster was being featured? A. You mean competing campaign of the two books; newspapers with the two books—one with the Merriam book and one with ours?

6871

Q. 43. Yes, A. Yes.

Q. 44. Were these campaigns hotly contested? A. Yes.

Q. 45. Which was the most hotly contested of all?

MR. HALE: I object to that as incompetent, irrelevant and immaterial, and as calling for a mere conclusion.

6872

A. The campaign in St. Louis was the Merriam book and the St. Louis Republic, and the book published by us distributed by the St. Louis Post Dispatch was a representative competitive campaign.

Q. 46. Were the other campaigns which were referred to as competitive, as hotly contested as the St. Louis one?

Albert L. Swift—Direct.

6873

MR. HALE: Same objection.

A. They were along the same lines, but the paper handling the Merriam book was not as vigorous in their fight as it was in St. Louis.

Q. 47. Do you mean that papers handling the Merriam book in other cities were not as vigorous in their campaign as the St. Louis Republic? A. That is what I mean. As a rule they generally stopped handling and advertising the book when we began making the competitive comparison. St. Louis did not stop for three or four weeks.

6874

Q. 48. I show you a clipping cut from the St. Louis Republic of September 11th, 1911, and ask you if that is copied from the reading notice which appears on the clipping attached thereto cut from the Pittsburgh Post of March 4th, 1911?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for matter not within the knowledge of the witness, and as calling for a conclusion. The advertisements are the best evidence of their contents and as to the source of their contents this witness has shown no knowledge.

6875

A. I clipped each article from each of these papers. The article in the St. Louis Republic is a repetition of the articles printed in the Pittsburgh Dispatch in March, the St. Louis Republic reprinting them as a reference to the Merriam Condensed Dictionary the following September.

6876

Q. 49. Do you know who wrote the reading notice that appears in the Pittsburgh Post? A. Yes.

Q. 50. Who? A. Mr. Paterson. At the time the article was written he was in the employ of

6877

Albert L. Swift—Direct.

the Pittsburgh Post and afterwards came with us.

Q. 51. Was this article copyrighted? A. Oh, no.

Q. 52. You make no claim, therefore, that any copyright was infringed? A. No; we merely secured from the Pittsburg Post permission to use it with our other papers.

6878

Q. 53. I show you a page cut from the St. Louis Republic of September 3rd, and ask you if that is one of the advertisements in the campaign which you have referred to as having been carried on in connection with the Merriam Webster's Dictionary? A. It is. I clipped it from that paper.

6879

Q. 54. Do you find the following words in that paper in large type, "To the happy possessor of a genuine Webster's Dictionary, illustrated 20th Century Edition, comes the assurance of having a work that has received the highest praise from leading educators, from the United States Supreme Court, the Supreme Court of Missouri, and of all other States, many State Superintendents of schools, and recognized leaders in the legal and medical professions in St. Louis"? A. Yes.

Q. 55. Have you a copy of Webster's Condensed Dictionary, 20th Century Edition, which is referred to in this advertisement? A. Yes.

6880

Q. 56. Can you produce it now? A. I have it at my office.

Q. 57. Will you produce such book? A. Yes.

MR. CARROLL: I offer that in evidence, the advertisement in the St. Louis Republic of September 3rd.

Q. 58. There are certain marks which appear on that advertisement. Can you explain that marking? A. Yes.

Albert L. Swift—Direct.

6881

Q. 59. Did you make the marks yourself? A. Yes.

Q. 60. What do they mean? A. That the parts marked were previously printed in the Pittsburg Post advertising, for the dictionary printed by the Syndicate Publishing Company which was being distributed by the Post.

Q. 61. The following language is marked as that referred to, and no other language marked: "All you need to do is to cut out seven dictionary coupons of consecutive dates from the daily and Sunday Republic and present same with the specified bonus which covers cost of packing, express from factory, checking, clerk hire and other necessary expense items. All the new words." A. This is a different sentence, a display line.

6882

Q. 62. Display line, "All the new words, splendidly illustrated." Large display line "make yourself a present." I show you another advertisement of the St. Louis Republic dated September 4th and ask you if that— A. (No answer.)

6883

Q. 63. Does that contain the following language in large type: "This splendid up-to-date lexicon of the English language, published by G. & C. Merriam & Company, is a practical abridgement of the well known unabridged, which with its successor the New International is the accepted authority on the English language endorsed" and so forth? A. Yes.

6884

Q. 64. And does it also contain the statement, "Bound like a bible in genuine full seal grain Morocco"? A. Yes.

Q. 65. Is there any part of that advertisement which you can state of your own knowledge is copied from one of the advertisements originated by the Pittsburg Post? A. Yes.

6885

Albert L. Swift—Direct.

Q. 66. What? A. The large display line in the advertisement, namely, "Bound like a bible", is taken from the display line of the Pittsburg Post. I know that I wrote that line for the Pittsburg Post. They printed it, and six months later I find it in that.

MR. CARROLL: I offer that in evidence.

6886

Q. 67. I show you an advertisement from the St. Louis Republic of September 5th, 1911, and ask you if you cut that from said paper? A. Yes.

Q. 68. Does the heading there being in extraordinarily large display type, "Genuine 20th Century Webster's Dictionary"? A. Yes, sir.

Q. 69. Is there material copied in this advertisement? A. Yes.

6887

Q. 70. Will you indicate it? A. The box display alongside of the cut, same as the previous quotation, beginning, "All you need to do is to cut out seven dictionary coupons" and so forth; the initial statement, as to the United States Census, "In this dictionary are the census papers of 1910, which are of great importance just now, showing the wonderful growth of various cities during the last decade, and of vital importance to all who would keep abreast of the remarkable progress of our country."

6888

Q. 71. Is that taken word for word from the Pittsburg Post? A. Yes; I wrote it.

Q. 72. Does it also appear in this advertisement, "No other dictionary publishes as complete census figures as this"? A. Yes.

Q. 73. Is that statement true?

MR. HALE: I object to that as irrelevant and immaterial.

Albert L. Swift—Direct.

6889

A. No, sir; our dictionary had nearly double.

Q. 74. Is this display line at the bottom cut from the Pittsburg Post, "Start clipping coupons to-day."

MR. HALE: I object to the form of the question as improper, the question should be directed to pointing out identity or similarity, without stating conclusions in connection therewith.

6890

A. Yes.

MR. CARROLL: I offer this in evidence.

Q. 75. I show you another advertisement headed "St. Louis Republic, September 6th," and ask you if you can identify that as having been cut by you from that newspaper? A. Yes.

MR. CARROLL: I offer this in evidence.

Q. 76. Does this advertisement contain the following language: "Webster's 20th Century Dictionary published by the G. & C. Merriam Company, the same concern which publishes the New International Dictionary, which is endorsed by the United States Supreme Court, the Supreme Court of Missouri," and so forth? A. Yes.

6891

Q. 77. And further, "The 20th Century is a condensed form of the larger book made available for more convenient and easy reference?" A. That is what it states.

6892

Q. 78. Does it also state, "Such an opportunity has never before been offered in St. Louis to procure the latest edition of Webster's Dictionary, the recognized standard?" A. Yes, sir.

Q. 79. I show you another advertisement headed, "St. Louis Republic, September 8th, 1911,"

6893

Albert L. Swift—Direct.

and ask you if you can identify that as having been cut from said paper? A. Yes, I cut it from that paper, and it contains an advertisement of the Merriam Dictionary.

Q. 80. In large letters on the cut of the dictionary is the following statement, "This is a genuine Webster"; also the name G. & C. Merriam Company? A. Yes.

6894

Q. 81. Also the circle wreath and monogram trademark of the G. & C. Merriam Company? A. Yes.

Q. 82. Also quotations from members of the Supreme Court, Superintendents of schools, doctors and so forth? A. Yes.

Q. 83. Referring to Webster's International Dictionary? A. Yes.

6895

Q. 84. Is there also a statement in large display type "The Republic offers you an opportunity to get a genuine 1911 edition of Webster's 20th Century Dictionary?" A. Yes; it also has the usual notice of the details of the plan in the exact wording of that used in the Pittsburg Post previously.

Q. 85. I show you an advertisement cut from the St. Louis Republic of September 9th and ask you if you can identify that as one cut from said paper by you? A. Yes.

6896

Q. 86. Does this contain the statement "It is not altogether easy, however, to foresee how many dictionaries will be required. Boston quickly took 35000. Pittsburgh grabbed up 40000." Does it contain that statement? A. Yes. That is not the whole quotation, although it appears as you have read it.

Q. 87. What is the whole quotation? A. "Have you got your seven coupons? If you have,

Albert L. Swift—Direct.

6897

hustle them down to the Republic Dictionary Department, south end of the counting room, ground floor, and get your Webster's 20th Century. The Republic hopes to be able to supply these dictionaries to all who want them. It is not altogether easy, however, to foresee, just how many will be required. Boston quickly took 35000. Pittsburg grabbed up 40000.' That is the complete quotation.

6898

Q. 88. Is the statement that Pittsburg grabbed up 40000 of the Webster's dictionaries a correct one? A. No.

Q. 89. Do you mean that the "Condensed Dictionary" was never sold in Pittsburg? A. Not on this plan or in that quantity.

Q. 90. Did you telegraph from St. Louis at that time—namely, September 9th, 1911—to the Pittsburg Post and ask whether they knew of any such distribution as that set forth in this advertisement?

6899

MR. HALE: I object to that as incompetent, irrelevant and immaterial, as a transaction between this witness, an employee of the defendant, and third persons, and in no way binding upon the complainant, and as pure hearsay.

A. Yes.

Q. 91. Did you receive a telegram which I now show you, in reply? 6900

MR. HALE: Objected to upon the same grounds, and protest is made against the abuse of this method of examination.

A. Yes.

6901

Albert L. Swift—Direct.

MR. CARROLL: I offer the telegram in evidence.

MR. HALE: The same objection repeated. Counsel would not dream of pursuing this course if there were a Court present to rule upon the propriety of such evidence.

(Subject to this objection the telegram is set forth in full as follows:)

6902

"The Western Union Telegraph Company."

Number Sent by Rec'd By Check

10 C X 29 Collect 12:34 P.M.
9/9 1911.

Received at St. Louis, Mo. H. O. Southern Hotel.

Telephones: Main, 3440. Kinloch-Central, 270

Dated W. Pittsburg, Pa. 9.

To A. L. SWIFT
So. Hotel

6903

Sold forty thousand six hundred Syndicate Publishing Dictionaries used no other was greatest publicity game ever in Pittsburg and we got credit as an Educator of the people. The Pittsburg Post."

MR. CARROLL: I offer the advertisement of September 9th St. Louis Republic, in evidence.

6904

Q. 92. I show you an advertisement marked "St. Louis Republic, September 10th," and ask you if you can identify that? A. I cut it from that paper on that date.

Q. 93. Does this advertisement also refer to Webster's Condensed Dictionary? A. Yes.

Q. 94. Does it contain the statement in large display type, "Endorsed by Missouri Educators"? A. Yes.

Albert L. Swift—Direct.

6905

Q. 95. Does it contain a list of new words? A. Yes, as follows, large display paragraph, reading, "Look in the dictionary you are now using and see how many you can find of these new words, which have been incorporated into our language only recently: Hangar, helicopter, hydroaeroplane and so forth," and the list ending with the words, "hookworm, lettergram, thermostat."

Q. 96. Are all those words in the Webster's Condensed Dictionary?

6906

MR. HALE: Objected to, and in addition to the grounds already reserved, as secondary, and because the book will speak for itself, and the book is not here present to be used upon the cross examination of this witness.

A. I made a careful examination and found that they were not contained in the Merriam Webster's Dictionary. I also made an examination and found that that entire column with the paragraph under it was wrong, as descriptive.

6907

Q. 97. Identify the paragraph under it somehow? A. Beginning, "Rufus Choate"—was wrong as descriptive of the Syndicate Publishing Company book of the Pittsburg Post campaign the previous spring.

MR. CARROLL: I offer that in evidence.

MR. HALE: It is understood, I presume, that all this is subject to the reserved objection.

6908

MR. CARROLL: Yes.

Q. 98. I show you a whole page advertisement headed St. Louis Republic, September 17th, 1911, and ask you if you cut that from that paper? A. Yes.

6909

Albert L. Swift—Direct.

Q. 99. Does this advertisement contain on the cover of the dictionary cut the Merriam trademark, circle wreath and monogram? A. Yes sir.

6910

Q. 100. Does it contain the following language, "The Republic gives you the opportunity of a lifetime to secure at trifling cost the best small dictionary in the world. You may never have another chance like this to own a genuine G. & C. Merriam Company's Webster's"? A. Yes.

Q. 101. Also in large display type, "Webster's 20th Century Dictionary"? A. Yes.

Q. 102. I show you a coupon cut from the St. Louis Republic dated September 19th, 1911, and ask you if you cut that coupon from said paper? A. Yes.

6911

Q. 103. And I ask you if it contains the word "Genuine G. & C. Merriam Webster's Condensed Dictionary Coupon"? A. Yes; that is their regular coupon that they ran in that campaign.

Q. 104. I show you a large display advertisement headed "St. Louis Republic September 19th, 1911," and ask you if you cut that from the newspaper mentioned? A. Yes.

Q. 105. Does this advertisement begin with the large display statement, "The truth about what is called 'Webster's New Standard Dictionary, Illustrated' "? A. Yes.

6912

Q. 106. Does it also contain the following language, "There is a book being sold by another St. Louis Newspaper known as 'Webster's New Standard Dictionary, Illustrated.' This work has absolutely no connection with the genuine Webster family. It was imported into the United States from England some years ago, about 1904, by a Dr. Klopsch, an editor of a New York Weekly. It was then and there known as the

Albert L. Swift—Direct.

6913

Crown Dictionary. Dr. Klopsch, after using it as a premium on his paper sold the right to revise and reprint it in this country to several publishing concerns. It never knew the name of Webster until 1908. Then the publishers of the book now offering in St. Louis, realized that the public had come to know Webster's as a mark of the highest merit in dictionaries (having been used for sixty-seven years by the G. & C. Merriam Company) adopted that family name for the market value it would give their books.

6914

"But note that this dictionary does not bear the circle trademark of the G. & C. Merriam Company. That would invite prosecution. The Merriam Company now have a suit pending in Court by which they aim to restrain other publishers from using the name Webster's, holding it as a part of their trademark. If the suit is decided in their favor, the old English Dictionary, masquerading as Webster's, will be given a new name. A copy of the Crown Dictionary above mentioned can be found at the dictionary department of the Republic and compared with Webster's New Standard Dictionary, Illustrated, by anyone desiring to substantiate these statements. This aforesaid alien orphan, the plates for which long ago became worn and obsolete, having no expense for editing and no editor, not even having its pages numbered, can be purchased very cheaply and sold to newspapers that are willing to foist it on an unsuspecting public as a Webster's Dictionary, at a profit to themselves.

6915

6916

"Sold in St. Louis for 98c. Newspaper advertisements are on file in the Republic Office showing that as late as June 11th this same book was offered by a certain New York paper for 89c. The

6917

Albert L. Swift—Direct.

extra charge of nine cents is the odd way adopted by its present newspaper sponsor to show "its appreciation of the loyalty of its readers."

6918

"Webster's Condensed Dictionary, 20th Century Edition, the G. & C. Merriam Publication, has never been offered by any newspaper at less than eighty-nine cents, and cannot be purchased at any store, the entire edition being reserved for newspaper distribution.

"The Republic welcomes legitimate competition. It claims no monopoly in its great educational offer of dictionaries, although first in the field. It only desires that those who want to accept this offer shall know the facts, and that those who desire to secure genuine Webster's dictionaries shall not be misled by clever misrepresentations into accepting a cheap imitation." A. Yes.

6919

Q. 107. Is the statement that Webster's Condensed Dictionary cannot be purchased at any store, the entire edition being reserved for newspaper distribution, correct?

MR. HALE: Objected to as not correctly quoting the language of the advertisement, which refers specifically to Webster's Condensed Dictionary, 20th Century Edition, and not to any copy of any edition of that book.

6920 A. No, sir.

Q. 108. I show you two advertisements headed the St. Louis Star, September 11, 1911, and one, the St. Louis Times, September 7, 1911, both advertising the store of William Barr & Company, and ask you if that contains an advertisement of Webster's Condensed Dictionary for eighty-five cents, being sold by the William Barr store?

Albert L. Swift—Direct.

6921

MR. HALE: I object to that as irrelevant and immaterial, because the advertisement produced is not an advertisement of the 20th Century Edition of Webster Condensed Dictionary.

A. Yes.

Q. 109. Did you go to the store of William Barr? A. Yes, and investigated the advertisement.

6922

Q. 110. Did you purchase one of these books? A. Yes.

Q. 111. For eighty-five cents? A. Yes.

Q. 112. Does the advertisement of September 19th, in the St. Louis Republic, above referred to, also contain this language, "Genuine Webster's Dictionaries, bearing the Merriam circle trademark, are endorsed by the United States Supreme Court, the Supreme Court of Missouri, the diplomatic service, and leading educators throughout the country"? A. Yes.

6923

Q. 113. Does it also contain a display type, "You don't want a copy of an imitation when you can get the genuine at less cost"? A. Yes.

MR. CARROLL: I offer these three advertisements in evidence.

Q. 114. I show you an advertisement headed St. Louis Republic, September 20th, and ask you if that was cut from that paper by you? A. Yes.

6924

Q. 115. Does it contain the following language in large display type, "This is your guide" with a copy of the circle wreath and monogram trademark of the G. & C. Merriam Company? A. Yes.

Q. 116. Also, "You don't want a copy of an imitation when you can get the genuine at less cost"? A. Yes.

6925

Albert L. Swift—Direct.

Q. 117. Also, "A circle is the trademark of the G. & C. Merriam Company. It is a guarantee of the highest merit in dictionaries. It means that a concern that has manufactured dictionaries for sixty-seven years past puts its reputation behind any book which bears that trademark? A. Yes.

6926

Q. 118. Also; "There are many so-called Webster's Dictionaries, but the kind that is used in ninety-nine per cent. of the leading schools, colleges and universities of the country, the kind that is endorsed by the United States Supreme Court, the kind the Republic is offering, is the genuine Webster's Dictionary, made by the old reliable Merriam Company, successors of the master mind of dictionary building, Noah Webster, is the kind that bear the circle trademark on the front cover. Why take an imitation when you can get the genuine for less"? A. Yes.

6927

MR. CARROLL: I offer this in evidence.

MR. HALE: We will consider each one offered as you refer to it.

Q. 119. I show you an advertisement headed St. Louis Republic, September 22nd, 1911, and ask you if that was cut from that paper by you? A. Yes.

6928

Q. 120. Does this contain in large display type at the head, "Genuine Webster's Dictionary, 20th Century Edition"? A. Yes.

Q. 121. Does it also include a coupon headed "Genuine G. & C. Merriam Webster's Condensed Dictionary coupon"? A. Yes.

Q. 122. At the bottom, the statement, "All genuine Webster's dictionaries bear the circle trademark on the front cover. Look for the circle"? A. Yes.

Albert L. Swift—Direct.

6929

Q. 123. I show you an advertisement headed St. Louis Republic, September 24th, 1911, and ask you if that contains the following language "Genuine Webster's dictionaries bear the circle trademark on their front cover. That is your guide. Look for the circle. It has no taint on its lineage. It belongs to the genuine Webster family." A. Yes.

Q. 124. Also in large display type, "Protect the children. Would you put into the hands of an innocent child a book which has absolutely no standing, a mere makeshift of a dictionary, recognized in no schools or colleges, containing no derivations, and not even having an editor? Then be cautious. Such a book is being offered in St. Louis to-day, loudly proclaimed as a four dollar book when it could be sold easily for ninety-eight cents with profit to its vendors," and at the bottom in large display type, "be sure and get the genuine Webster's the 20th Century?" A. Yes.

6930

6931

Q. 125. Also, "Bound in seal grain Morocco?" A. Yes.

Q. 126. Did you examine one of the books advertised as being bound in seal grain Morocco? A. Yes.

Q. 127. Was it bound in seal grain Morocco? A. No, sir.

Q. 128. What was it bound in? A. Skiver.

Q. 129. What would a seal grain Morocco binding for a book of this size cost per volume? A. It is very expensive.

6932

Q. 130. I show you an advertisement cut from the St. Louis Republic of October 1st, 1911, and ask you if you yourself cut that from said newspaper? A. Yes.

Q. 131. Does it contain the following language,

Albert L. Swift—Direct.

6933

"To-day the 1911 or 20th Century edition of Webster's Dictionary is offered to the people in St. Louis and the State of Missouri by the Republic by special arrangement with G. & C. Merriam Company at Springfield, Mass., the legitimate and direct successors of Noah Webster. This edition is the very latest on the market."

6934

MR. HALE: Objected to, in addition to other grounds reserved, as incompetent, irrelevant and immaterial, because not connected with the Merriam Company, and as no evidence whatever of the facts recited therein.

A. Yes.

6935

Q.132. Does it also contain the following language, marked "A," "There is not a man, woman or child in St. Louis, from bank president to boot black, from working girl to society matron, big or little, young or old, who cannot find something of vital value in this dictionary?" A. Yes, sir.

Q. 133. Did you ever see language of that kind in any other advertisement? A. Yes.

6936

Q. 134. Where? A. I wrote it, and it was printed in the Pittsburgh Post in the previous Spring in connection with the dictionary sold by us to that paper.

Q. 135. Also the language, "Don't miss this golden opportunity. It comes to you once in a lifetime." A. Same answer as to the previous question.

Q. 136. When did you first notice the campaign in the St. Louis Republic in connection with the Merriam Webster's Dictionary? A. Just about September 1st, the first week in September.

Albert L. Swift—Direct.

6937

Q. 137. What particularly attracted your attention to it? A. The advertisement appearing in the St. Louis Republic, the first day that it advertised the Merriam book.

Q. 138. Was there anything particular about that advertisement which attracted your attention? A. Yes, I saw they were advertising it exactly along the same lines used by the Pittsburgh Post in their campaign with the book that we had sold them.

6938

Q. 139. Did you go to St. Louis yourself? A. Yes.

Q. 140. Did you go to the editor of the St. Louis Republic and call his attention to that fact?

A. Yes—the publisher, rather than the editor.

Q. 141. Who was that? A. Mr. Knapp.

Q. 142. Did he in the end admit that his advertisements were taken from those which appeared in the Pittsburgh Post?

6939

MR. HALE: I object to it as incompetent, irrelevant and immaterial, and as leading; also as relating to a transaction with a third person, not in any way binding upon the complainant, and as hearsay.

A. I showed him the ads previously used by the Pittsburgh Post. He explained to me that he thought his copy for the ad. had been given to him for the Merriam book campaign—been clipped from newspapers that had used the Merriam book.

6940

Q. 143. Did you convince him that that was not the fact?

MR. HALE: Same objection.

A. Yes, I showed him, for instance, that one was a list of words—had him send down and get a

6941

Albert L. Swift—Direct.

book from his own counter and check back those words, and showed him in the advertisement in the Pittsburgh Post six months before, with the exact same words in that he was carrying, and asked him if that did not convince him that that portion of that ad. had been clipped from the paper handling our book instead of the Merriam book. He said it did.

6942

Q. 144. At or about this time did any other St. Louis paper begin a campaign with the books of the Syndicate Publishing Company entitled "Webster's New Standard Dictionary"? A. Yes.

Q. 145. What paper was that? A. The St. Louis Post Dispatch.

6943

Q. 146. Was that the occasion for the comparisons and statements concerning the Syndicate Publishing Company book which appeared in the advertisements of the St. Louis Republic in connection with the Merriam book? A. Yes.

Q. 147. Did those featured advertisements in the St. Louis Republic injure the sales of the dictionary which was being sold by the St. Louis Post Dispatch?

MR. HALE: Objected to as irrelevant, and immaterial and leading and as calling for a conclusion.

6944

A. No, sir. Our sale in St. Louis through the Post Dispatch was very large.

Q. 148. Have you a record of the sales which were made by the St. Louis Post Dispatch in competition with the Merriam Condensed Dictionary? A. Yes.

Q. 149. What were those sales? A. I have a record here showing the sales by weeks and also

Albert L. Swift—Direct.

6945

before coming down I looked on our book and saw the total sales we had in St. Louis. The total sales we had in St. Louis exceeded thirty thousand.

Q. 150. What were the sales by weeks? A. On September 15th and 16th, which were the first two days of the distribution, they sold 2,236 copies. The week ending September 23rd they sold 6,799 copies.

6946

Q. 151. Was it in that week that the advertisement in the St. Louis Republic particularly denouncing the book published by the Syndicate Publishing Company appeared?

MR. HALE: Objected to as irrelevant and immaterial.

A. Yes.

Q. 152. Will you continue giving the sales? A. Week ending September 30th they sold 2,918. The week ending October 10th they sold 991. The week ending October 17th, 861; the week ending October 24th, 676; the week ending October 31st, 1,056. The week ending November 7th, 2,037. The week ending November 14th, 5,278.

6947

Q. 153. Did that end the campaign. A. No.

MR. HALE: Go on to the end of the campaign.

A. That is all the figures I have.

6948

Q. 154. Did the campaign last more than a day or two longer? A. The first campaign practically closed on November 14th, but the hangover sold several hundred or possibly considerably more than that the next week or two. Then, later—at a later time—for instance, during December, I think it was—we had to have a renewal cam-

6949

Albert L. Swift—Direct.

paign there, because the demand still kept up. I have not brought the figures for those; but the total of the two campaigns—that is, the two distributions—exceeded the thirty thousand.

Q. 155. I notice that these figures are large in the beginning and after the first week or two become smaller. Was that unusual? A. No; all campaigns bear that distinctive feature, wherever we have sold these dictionaries through papers.

6950

Q. 156. How do you account for that?

MR. HALE: I object to that as calling for the conclusion and surmise of the witness.

6951

A. The distribution of the first few days has been preceded by large preliminary advertising by the paper, announcing that their distribution will take place, which leads to an accumulation of coupons ready to be turned in. Then, after two or three weeks, I noted from the records turned in by the different papers, showing how many books they have distributed, that there is a sort of lull in the campaign. It comes down considerably. Then this is again brought up to relatively large quantities by the larger display advertising that the paper runs as they approach the completion of their campaign.

6952

Q. 157. Do you know when the campaign of the St. Louis Republic in connection with the Merriam Condensed Dictionary ended? A. I recall it was two or three weeks previous to ours.

Q. 158. Did it continue after the last advertisement, dated October 1st, 1911? A. I have looked up and was in touch with when the St. Louis Republic closed, but I have not the date or the memorandum here. It was previous to our closing. Our final close was after Christmas.

Albert L. Swift—Direct.

6953

Q. 159. Was the campaign of the St. Louis Republic in connection with the Merriam Webster's condensed Dictionary continued until November 14th, approximately? A. No, sir.

Q. 160. When did it end approximately? A. I can state with reasonable definiteness on that. The St. Louis Post Dispatch first closing was November 14th. They had ten preliminary closing days, that is, ten days preliminary to their closing. The day before that first one was printed the St. Louis Republic announced their closing offer that coming Saturday. Therefore, I can be positive in my statement that the Republic closed a week or ten days ahead of the Post Dispatch first closing, when the Post Dispatch were forced to open again by the demand upon them for the books.

6954

Q. 161. When did the Post Dispatch close for the second time? A. After Christmas.

Q. 162. I show you four certified copies of certificates of copyright issued to Frank E. Wright, dated respectively June 29, 1908, November 10, 1910, March 31, 1911, October 20, 1911, and ask you if those are copyrights relating to the New Illustrated Dictionary, and to Webster's New Standard Dictionary, published by the Syndicate Publishing Company?

6955

MR. HALE: Objected to upon the ground that the certificates speak for themselves.

6956

A. Yes.

MR. CARROLL: I offer these in evidence.

(By consent the certificates are set forth at length in the record, and are as follows):

6957

*Albert L. Swift—Direct.*COPYRIGHT OFFICE OF THE
UNITED STATES OF AMERICA.

A.

Library of Congress,
Washington, D. C.

CERTIFICATE OF COPYRIGHT REGISTRATION.

6958

THIS IS TO CERTIFY, in conformity with Section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that two copies of the book named herein have been deposited in this office under the provisions of the said Act, together with the AFFIDAVIT prescribed in Section 16 thereof; and that an entry for copyright for the first term of 28 years from the date of publication of said book has been duly registered in the name of Frank E. Wright, New York, N. Y., book entitled Webster's New Illustrated Dictionary of the English Language.

Name and address of claimant.

6959

Chas. Leonard Stuart, Editor.

New York Syndicate Publishing Co., 1911.

Date of publication Nov. 8, 1910. Affidavit received Nov. 10, 1910. Copies received Nov. 10, 1910. Entry: Class A, XXc, No. 275310.

(SEAL)

ERNEST BRUNCKEN,
Assistant Register of Copyrights.

6960

COPYRIGHT OFFICE OF THE
UNITED STATES OF AMERICA.

A.

Library of Congress,
Washington, D. C.

CERTIFICATE OF COPYRIGHT REGISTRATION.

THIS IS TO CERTIFY, in conformity with Section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that two copies of the book named herein have

Albert L. Swift—Direct.

6961

been deposited in this office under the provisions of the said Act, together with the AFFIDAVIT prescribed in Section 16 thereof; and that an entry for copyright for the first term of 28 years from the date of publication of said book has been duly registered in the name of Frank E. Wright, New York, N. Y.

Book entitled Webster's New Standard Dictionary, Illustrated.

6962

1910 Census, and maps.

Name and address of claimant.

Charles Leonard Stuart.

Date of publication Mar. 29, 1911. Affidavit received Mar. 31, 1911. Copies received Mar. 31, 1911. Entry: Class A, XXc, No. 283845.

(SEAL) ERNEST BRUNCKEN,
Assistant Register of Copyrights.

COPYRIGHT OFFICE OF THE
UNITED STATES OF AMERICA.

A.

6963

Library of Congress,
Washington, D. C.

CERTIFICATE OF COPYRIGHT REGISTRATION.

THIS IS TO CERTIFY, in conformity with Section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, that two copies of the book under the provisions of the said Act, together with the AFFIDAVIT prescribed in Section 16 thereof; and that an entry for copyright for the first term of 28 years from the date of publication of said book has been duly registered in the name of Frank E. Wright, New York, N. Y.

6964

Book entitled Webster's New Standard Dictionary, Illustrated, with U. S. Census and maps.

6965

Albert L. Swift—Direct.

New edition revised and edited under the direction of Edward T. Roe and Charles Leonard-Stuart, Edward T. Roe & Charles Leonard Stuart, revisers and editors, New York Syndicate Publishing Company, 1911.

Date of publication Oct. 18, 1911. Affidavit received Oct. 20, 1911. Copies received Oct. 20, 1911. Entry: Class A, XXc, No. 300206.

6966

(SEAL) ERNEST BRUNCKEN,
Assistant Register of Copyrights.

Class A, XXc, No. 210840.

LIBRARY of CONGRESS, to wit:

6967

BE it REMEMBERED,

That on the twenty-ninth day of June, 1908, Frank E. Wright, of Philadelphia, Pa., hath deposited in this Office the title of a book, the title of which is in the following words, to wit: Webster's New Illustrated Dictionary of the English Language, based upon the Unabridged Dictionary of Noah Webster, LL.D. Revised and brought up to date (etc).

Philadelphia: Syndicate Publishing Company, 1908, the right whereof he claims as proprietor in conformity with the laws of the United States respecting Copyrights.

6968

Office of the Register of Copyrights, Washington, D. C.

HERBERT PUTNAM,
Librarian of Congress.

By

THORVALD SOLBERG,
Register of Copyrights.

Albert L. Swift—Direct.

6969

I hereby certify that the foregoing is a true copy of the original record of copyright. IN WITNESS WHEREOF, the seal of this office has been hereto affixed this fifteenth day of May, 1912.

ERNEST BRUNCKEN,
Assistant Register of Copyrights.

(Seal)

Copyright Office of the United States of America,
Washington, D. C.

6970

Q. 163. Can you state approximately when the notice, "This dictionary is not published by the original publishers of Webster's Dictionaries or by their successors" was inserted by the Newark Star in its advertisements of the Webster's New Standard Dictionary? A. October 16th, 1911.

Q. 164. Have you a copy of the Newark Star of October 16th, 1911? A. Yes.

Q. 165. Will you produce it? A. Yes. 6971
(Produces).

MR. CARROLL: I offer the sixth page in evidence.

Q. 166. Did all advertisements of the Newark Star, so far as you know, in connection with Webster's New Standard Dictionary, after that date, contain the notice, "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors? A. So far as I know they did, and I know that all were so ordered by us. 6972

Q. 167. Have you any more later advertisements? A. I have one of October 25th which contains the notice (produces).

MR. CARROLL: I offer that in evidence.

6973

Albert L. Swift—Direct.

Q. Do each of these advertisements which you have just identified contain the coupon in close proximity to this notice? A. Yes.

Q. 169. Have you a record of the sales of the dictionary by the Newark Star for a week or two before October 16th, and a week or two after that date? A. Yes.

6974

Q. 170. What does that record show? A. The record shows that the week ending September 30th, the Newark Star sold 476 copies; week ending October 7th, 398; week ending October 4th, 292; then the cautionary notice was inserted; the week ending October 21st, the distribution was 226; October 28th, the distribution was 183; November 4th, 266, November 11th, 556.

6975

Q. 171. Do you know on or about what date the notice, "This dictionary is not published by the original publishers of Webster's Dictionaries or by their successors" was inserted in the Buffalo Evening News? A. Yes.

Q. 172. About what date was that? A. October 16th, 1911.

Q. 173. Have you a copy of that paper with you? A. Yes, one of October 16th and one of October 19th, in both of which it shows the cautionary notice was running.

6976

MR. CARROLL: The one of October 16th is offered in evidence, and reference is hereby made to the advertisement of October 19th previously offered.

Q. 174. Does each one of these advertisements contain the notice, "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors?" A. Yes.

Albert L. Swift—Direct.

6977

Q. 175. And in each one of them the coupon is in close proximity to that notice? A. Yes.

Q. 176. Have you a record of the sales for the week or two preceding October 19th and a week or two after October 19th, by the Buffalo Evening News? A. I have taken a record two weeks on each side of the printing of the cautionary notice as follows: October 7th, 619; October 14th, 517; October 21st, 860; October 28th, 3,235.

6978

Q. 177. Did all advertisements after October 16th contain the notice, "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors?" A. To the best of my knowledge, and all were so ordered.

Q. 178. Do you know when the notice, "This dictionary is not published by the original publishers of Webster's Dictionary or their successors" was inserted in the Baltimore American? A. Yes, October 19th.

6979

Q. 179. Have you a copy of the Baltimore American of that date? A. Yes.

Q. 180. Will you produce it? A. Yes (produces).

MR. CARROLL: I offer it in evidence.

Q. 181. Does that contain the cautionary notice? A. Yes.

Q. 182. Is the cautionary notice a part of the same advertisement as the coupon? A. Yes.

6980

Q. 183. Have you a record of the sales at or about the 19th of October, 1911, by the Baltimore American? A. Taking two weeks on each side, week ending October 11th, 960; week ending October 18th, 714; week ending October 25th, 692; November 1st, 1,068; November 8th, 3,438.

Q. 184. Do you know on or about what date

6981

Albert L. Swift—Direct.

the so-called cautionary notice was inserted in the Flint, Michigan, Journal? A. Yes.

Q. 185. What date was that; on or about what date? A. October 21st, 1911.

Q. 186. And have you a copy of the Flint Michigan Journal of October 21st, 1911? A. Yes

Q. 187. Will you produce it? A. Yes (produces).

6982

MR. CARROLL: I offer it in evidence.

Q. 188. Does this advertisement contain the notice, "This dictionary is not published by the original publishers of Webster's dictionary or by their successors?" A. Yes.

Q. 189. Is that notice printed directly under the coupon? A. Yes.

Q. 190. In this paper? A. Yes.

6983

Q. 191. Have you a record of the sales at or about that date? A. Yes. Do you want the ones previous?

Q. 192. Yes? A. October 7th, 335; October 14th, 110; October 21st, 131; October 28th, 98; November 5th, 202; November 11th, 453; November 18th, 561.

Q. 193. Did all of the advertisements published by the Flint Journal after October 19th contain the cautionary notice?

6984

MR. HALE: Objected to as not the best evidence and as not shown to be within the knowledge of the witness.

A. To the best of my knowledge they did, and all were so ordered.

MR. HALE: The answer is objected to as no evidence of the fact inquired about and motion is made to strike it out.

Albert L. Swift—Direct.

6985

Q. 194. Do you know on or about what date the so-called cautionary notice was inserted in the Taunton Daily Gazette? A. Yes, October 28th.

Q. 195. Have you a copy of the Taunton Daily Gazette of that date? A. Yes (produces).

MR. CARROLL: I offer that in evidence.

Q. 196. Does that contain the cautionary notice? A. Yes.

6986

Q. 197. Did the papers immediately after that and from then on until the end of the Taunton Campaign contain the cautionary notice? A. Yes.

Q. 198. Have you a record of the sales of the Taunton Daily Gazette? A. Yes.

Q. 199. In connection with the advertisement of the Standard Dictionary? A. October 14th, 67; October 21st, 52; October 28th, 69; November 4th, 50; November 11th, 43; November 18th, 39; November 25th, 50; December 2nd, 79.

6987

Q. 200. Do you know on or about what date the said cautionary notice was inserted in the Grand Rapids Press? A. Yes; October 17th.

Q. 201. Have you a copy of the Grand Rapids Press of October 17th? A. Yes.

Q. 202. Will you produce it? A. Yes (produces).

MR. CARROLL: I offer it in evidence.

Q. 203. Does that advertisement contain the cautionary notice? A. Yes.

6988

Q. 204. And as part of the same advertisement, does the so-called coupon appear? A. Yes, sir.

Q. 205. Do all the advertisements after this date inserted by the Grand Rapids Press in connection with this dictionary contain that notice?

6989

Albert L. Swift—Direct.

MR. HALE.—Objected to as incompetent, irrelevant and immaterial and not calling for any fact shown to be within the knowledge of the witness, but for a mere guess.

A. I made a careful search through all the Grand Rapids papers, and found it was in every one of them that I was able to find; and it was so ordered.

6990

Q. 206. In the other papers that you have testified about to-day, have you made a search through them after the dates given? A. I could not find one after those dates in any paper.

Q. 207. Which did not contain the notice? A. Which did not contain the notice.

Q. 208. Did the newspapers in each case send you complete files of their papers which contained the advertisement they were running? A. Yes, at the time.

6991

Q. 209. So that you would probably have in your possession and have probably seen practically all of the advertisements which have appeared in the newspapers specified, after the dates mentioned in which the cautionary notice was first inserted?

MR. HALE.—Objected to as argumentative and leading and calling for mere probabilities instead of for facts.

6992

A. Yes.

Q. 210. Have you a record of the sales made by the Grand Rapids Press on or about October 17th, 1911? A. Yes.

Q. 211. What does that record show? A. Part of the record; from October 2nd, 567; week ending October 9th, 523; October 16th, 335; October 23rd,

Albert L. Swift--Direct.

6993

206; October 30th, 255; November 6th, 280; November 13th, 972.

Q. 212. Are these examples which I have shown you typical examples of the sales of newspapers at or about the time when the newspapers inserted the so-called cautionary notice?

MR. HALE: Objected to as calling for a mere conclusion and as not the best evidence.

6994

A. Yes.

Q. 213. Have you already given all the more important newspaper records of campaigns which were being carried on at or about the 15th of October, 1911? A. Yes.

Q. 214. It has been testified to by you and by Mr. Wright that on or about October 12th or 15th, 1911, a notice was sent to all of the newspapers which were then advertising the dictionary of the Syndicate Publishing Company requesting them to insert in their advertisements, "this dictionary is not published by the original publishers of Webster's Dictionary or by their successors". Did you watch with great care the effect upon the sales of the insertion in the advertising in the newspapers of that notice?

6995

MR. HALE: Objected to as incompetent, irrelevant and immaterial and calling for a conclusion and guess of the witness, as he cannot possibly know all the factors influencing purchasers; and the notice is only one of them.

6996

A. Yes.

Q. 215. Are you able to state from that observation what effect, if any, the so-called cau-

6997

Albert L. Swift—Direct.

tionary notice had upon the sales of newspapers?

MR. HALE: Same objection.

A. It had no effect.

Q. 216. Well, are you able to state? A. I am able to state, yes.

6998

Q. 217. What effect, if any, did this notice have? A. It had no effect. The sales by the papers ran right along just the same way. For instance, the figures I gave you in the testimony a few minutes ago at Baltimore—that is an extremely large ad (indicating) in the Baltimore American. We published the cautionary notice in the Baltimore American as the very largest display item of the advertisement, on October 31st. As I testified a while ago the sales for the week ending October 25th had been 692. Then, for the week ending November 1st, following this big display announcement and the cautionary notice, the sales were 1068, and the following week, November 8th, the sales were 3438.

6999

Q. 218. Did you send this notice which is exemplified by the exhibit taken from the Baltimore American of October 31st, to all of the newspapers who were selling your books? A. You mean the prominence of the display of the cautionary notice?

7000

Q. 219. I mean a notice of that size? A. With that same prominence of display, that notice was sent to every paper that was buying books of us.

Q. 220. I just want to call your attention at this point to the following exhibits which are already in evidence, and which are referred to in connection with the testimony of Mr. Swift, concerning the insertion of the cautionary notice in the last series of papers mentioned and in connection

Albert L. Swift—Cross.

7001

with the sales in those newspapers. The Newark Star of October 20th, the Buffalo Evening News of October 21st, Grand Rapids Press of November 6th, Baltimore American of October 22nd, and October 31st, Flint Michigan Journal, November 6th.

MR. HALE: Objection is made to this pointing out of specific papers on the ground that such papers are not at all typical examples of the advertisements of defendant's dictionary which have appeared in the papers throughout the country, and particular advertisements which might be themselves unobjectionable are no evidence whatever that innumerable other objectionable advertisements have not been published. 7002

MR. CARROLL: Defendant's counsel remarks that the burden of proving the existence of any objectionable advertisements is upon the complainant, and there is no presumption that they exist. 7003

MR. HALE: The complainant has produced two volumes of such objectionable advertisements which have been offered in evidence.

CROSS EXAMINATION by Mr. Hale:

x Q. 221. Referring to the style of display of the cautionary notice in the Baltimore American of October 31st, 1911, did defendant give any special instructions after that—I mean as to the display. A. Yes, sir. 7004

x Q. 222. Just what was done in that respect? A. This type (indicating) was set up here at a job

7005

Albert L. Swift—Cross.

office in that style of type, and pasted on top of an advertisement and sent to the paper for copy.

x Q. 223. Was that the ordinary way of doing it? A. This was a special case. We wanted to send the cautionary notice in very large display to every paper on our list.

7006

x Q. 224. At that time? A. Yes, and at following times. Here is where it is run in the same type at a previous date in the Buffalo News (indicating), ten days earlier.

x Q. 225. And for how long did that use of display type for the warning notice continue? A. In that form, you mean, Mr. Hale?

x Q. 226. Yes; in that form of display? A. One or two ads to each paper.

x Q. 227. And how many papers carried it in that form? A. Whatever papers we had running at that time. I would not be able to say.

7007

x Q. 228. There were other papers at later dates which never carried the advertisement in that display form? A. Every campaign since then has always had those—

x Q. 229. In type as large as that, contained in the Baltimore American? A. Yes; just in one or two ads.

7008

x Q. 230. In the later ads the notices appeared in smaller type and in a different location? A. Oh, yes. The paper would not devote that much space to that announcement.

x Q. 231. Is there any paper since you first began using any form of cautionary notice that has not at least once carried the notice in their advertisements in as large a form of display type as the one contained in the Baltimore American of October 31st, 1911? A. I don't know of any.

x Q. 232. It is true, is it not, that the coupons

Albert L. Swift—Cross.

7009

referred to in the advertisement are not always printed as a part of such advertisement? A. Yes.

x Q. 233. Frequently they appear upon another page of the paper? A. Yes.

x Q. 234. Have you pointed out any instances of a cautionary notice in connection with a coupon where the coupon was not a part of a distinctive advertisement of the book? A. The Newark Star of October 16th, 1911, and the Flint Journal of October 21st, 1911.

7010

x Q. 235. All the other coupons as to which you were specifically asked by your counsel were cases where the coupons appeared combined with the general advertisement of the dictionary? A. Yes, sir.

x Q. 236. In those two instances of the Newark Star and the Flint Journal, wasn't the coupon the only advertisement of the dictionary that appeared in those issues? A. Yes, sir; there is not a display advertisement in every issue of each paper.

7011

x Q. 237. Which campaign in St. Louis was the most successful in point of number of books distributed by the Post Dispatch, the first or the second one? A. The first campaign extended over quite considerably more period of time. The second campaign was just a short campaign of eight or ten days. More books were distributed on the long campaign.

x Q. 238. You have not produced and offered in evidence any of the advertisements published by the St. Louis Post Dispatch, have you, in connection with this campaign? A. I would not know without referring to that list.

7012

x Q. 239. Please refer to the advertisements which have been offered in evidence, and say

7013

Albert L. Swift—Cross.

whether or not any from the St. Louis Post Dispatch have been thus offered in evidence? A. No; I have one in my hand that I am willing to offer in evidence.

7014

x Q. 240. In the Omaha Daily News of November 13th, 1911, which was subsequent to the beginning of this suit, I call your attention to the dictionary coupon and advertisement appearing on page 8 of that issue, and ask you if it is not true that that coupon and advertisement does not contain a cautionary notice in any form? A. The coupon on page 8 of the Omaha Daily News of November 13th does not have a cautionary notice, although the cautionary notice is on the reverse side of that page, in the display advertising of that date.

7015

x Q. 241. You mean that on page 7 of that newspaper there is a display advertisement which contains the usual cautionary notice? A. Yes.

x Q. 242. On page 8, in connection with the coupon, whether or not it forms part of it, is there not a description of the three styles of books with prices and the like? A. Yes; it has the appearance of the regular coupon being run by that paper, all enclosed in a border.

7016

x Q. 243. Is that matter thus enclosed on page 8 of that issue what you term the regular dictionary coupon? A. Yes, what I have termed the regular dictionary coupon of the Omaha Daily News—meaning that they are not all of standard size or wording.

x Q. 244. That is substantially the form in general use by different papers in the newspaper campaign at or about that date? A. I would think so.

x Q. 245. Did not the defendant furnish a cut or impression of that form of coupon for the use in the paper? A. Yes, when the contract was made; the contract for that paper being several months prior to November 13th.

x Q. 246. Was it an ordinary and usual part of the dictionary coupon used in the newspaper campaign to describe defendant's dictionary in its various styles as "the four dollar Webster's New Standard Dictionary, Illustrated, bound in full limp leather, flexible, stamped in gold on back, and others printed on bible paper, with red edges and corners rounded; beautiful, strong, durable. Besides the general contents as described elsewhere, there are maps, and over six hundred subjects, beautifully illustrated," and so forth, etc.? A. Yes.

7018

x Q. 247. And it was likewise a part of the ordinary and usual dictionary coupon to describe in like manner the \$3.00 edition and the \$2.00 edition? A. Yes.

7019

x Q. 248. As well as to give what is termed an expense bonus of ninety-eight cents, eighty-one cents and forty-eight cents for the three different styles? A. Yes.

x Q. 249. And you do not regard that as in any sense an advertisement? A. It has always been regarded by us as a coupon of the newspaper.

x Q. 250. It would also be fairly described as an advertisement, would it not? A. Well, I would not think so, any more than a reading notice.

7020

x Q. 251. What is a reading notice? A. A reading notice, as we understand the term, is any notice published on a page containing almost wholly reading matter instead of on an advertising page.

7021

Albert L. Swift—Cross.

x Q. 252. That is quite a common element of newspaper advertising campaigns, is it not? A. In all newspaper promotion campaigns whether advertising or otherwise, the paper generally refers to their plans in the reading notices.

7022

x Q. 253. In the advertisement appearing in the Parsons Daily Sun of November 7th, 1911, which contains the cautionary notice, I find this language at the foot of the advertisement, "Caution—when a dictionary is offered you which is in any way similar to this one, observe the exact wording shown herewith. You want the latest. Don't be deceived. This is the latest." Whose language is that? A. That is the language of the paper. I cannot even tell what it means.

x Q. 254. That is not the language of any person connected with the Syndicate Publishing Company? A. No sir.

7023

x Q. 255. You think then that was inserted by this newspaper upon its own responsibility? A. Yes.

7024

x Q. 256. This same advertisement contains the following language, "Our publisher submits positive proof that the Sun's dictionary is the *latest*,—up to the day—filled to the full, 1,200 pages, with needful information—illustrated in color and monotone, and is complete, accurate and authentic from cover to cover." Whose language is that? A. The entire ad is a newspaper ad made up in their own way. It is not one of our standard ads at all.

x Q. 257. Was any part of that made from copy or plates furnished by the defendant? A. The table of contents, cautionary notice, the details regarding the books opposite the price, and the

Albert L. Swift—Cross.

7025

cut of the book, evidently have been clipped from other advertising matter prepared by us.

x Q. 258. Did the defendant pay in cash for the publication of this ad? A. No sir.

x Q. 259. Did the defendant make any allowance in any way on credit to the paper on account of this ad? A. None whatever; entirely their own scheme.

x Q. 260. Was any provision as to advertisement made in the contract with this paper for the distribution of defendant's dictionaries? A. That they were to advertise the distribution.

7026

x Q. 261. Did the contract stipulate anything as to the expense or manner of advertising?

MR. CARROLL: I object to all this line of examination as having been already gone into at great length.

A. No; other than that they were to advertise the proposition.

7027

x Q. 262. Did not specify how much advertising should be given? A. No; it was their own proposition.

x Q. 263. In the last statement quoted from this, namely, that the publisher submits positive proof, and so forth—is that statement true? A. I cannot even imagine what it refers to.

x Q. 264. I presume you don't know then what the name authentic means in the statement quoted? A. It is not our language at all.

7028

x Q. 265. In the Lincoln Daily Star of November 7th, 1911, I notice a dictionary coupon in all respects like the one called to your attention which is contained on page 8 of the Omaha Daily News. You don't find any cautionary statement in that

7029

Albert L. Swift—Cross.

coupon or advertisement, whichever you care to term it, do you? A. No sir; it is in the display advertisement on the reverse side of that page.

x Q. 266. But on a totally different page? A. Yes.

7030

x Q. 267. In this advertising exhibit of Defendant's except where the dictionary coupon happens to appear upon the reverse side of the page, carrying the display advertisement, you have in no instance included the dictionary coupons, have you?

MR. CARROLL: I object to that question on the ground that the exhibit speaks for itself.

MR. HALE: I am simply following the example set by my learned opponent.

A. I have not seen any that do.

7031

x Q. 268. In the Easton Daily Argus of October 27th, 1911, the dictionary coupon appears upon a page by itself, the display advertisement being upon the reverse page. That also is the usual form of dictionary coupons without any cautionary statement, is it not? A. It is the usual form of dictionary coupon in use at that time.

7032

x Q. 269. And it contains no cautionary statement? A. It contains no cautionary statement; the cautionary statement was sent to that paper and each of these papers, with instructions to put that on each ad. They put them on one ad in the paper.

x Q. 270. I call your attention to the dictionary coupon which is an integral part of the display advertisement in the Evening Wisconsin of November 13th, 1911, and ask you if that is not in fact the ordinary form of dictionary coupon—the

descriptive matter which I quoted before being an advertisement and not part of the coupon? A. No, sir. That advertisement has been cut down on the part of the paper in economizing space. Our regular ad with that heading is a fixed column full depth.

x Q. 271. In other words, when the coupon is made an integral part of the advertisement the usual descriptive matter which I quoted from the first coupon as contained in the Omaha Daily News is omitted; is that correct? A. Yes; that matter is generally at the same time printed on another page with the coupon.

7034

x Q. 272. The Flint Daily Journal of November 6th, 1911, and the Baltimore American of October 31st, 1911, is another illustration of the coupon as used when combined with the usual display advertisement? A. In those particular ads the coupon proper is undoubtedly on some other page of those issues.

7035

x Q. 273. In addition to the coupon which is contained in the advertisement? A. Yes.

x Q. 274. Does it ever occur or is it at all usual for two coupons to be published in the same issue of a single paper? A. It has occurred; yes, sir.

x Q. 275. How often? A. Well, I know of instances where the paper has doubled up the coupon in the ad where they have let it run in its accustomed place elsewhere.

7036

x Q. 276. And in such instances the coupon which is not a part of the double ad is in the full form as quoted from the Omaha Daily News? A. Yes.

x Q. 277. What is the full name of the Mr. Murphy you referred to? A. J. F.

x Q. 278. Do you know his present address? A.

Albert L. Swift—Cross.

7037

I saw him about five weeks ago, and he told me where he was.

x Q. 279. Where was he then? A. He told me he was traveling for the Merriam Company.

x Q. 280. Did he say the Merriam Company or Reilly & Britton? A. He said the Merriam Company.

7038

x Q. 281. Did he tell you what book he was selling at that time? A. Webster's Condensed.

x Q. 282. Where did you see him? A. I saw him on the train coming from Chicago to Philadelphia. He told me he lived at Worcester.

x Q. 283. Have you ever heard of Reilly & Britton in connection with Webster's Condensed Dictionary, 20th Century edition, in connection with a newspaper campaign? A. I did not.

7039

x Q. 284. Have you heard of them in connection with any edition of Webster's Condensed Dictionary offered through a newspaper campaign and in competition with the Syndicate Company's book? A. Never have heard of them in connection with anything offered in the line of a dictionary in competition with the Syndicate book. I remember selling papers or books for canvassing purposes—nothing within the last two years that I know of.

7040

x Q. 285. Don't you know that their name appears in the publisher's imprint upon the Webster's Condensed Dictionary to which you have referred in your direct testimony as having been offered through newspapers? A. I didn't notice it, if it does.

x Q. 286. The advertisement of Webster's Condensed Dictionary by William Barr of St. Louis did not describe the book as the 20th Century Edition, did it? A. The cut of the book they used in

the advertisement was Webster's Condensed. The only difference between that book on sale at Barr's and the Merriam book on sale at the St. Louis Republic consisted in the stamping of the words "20th Century Edition" on the cover of the St. Louis Republic Book; the addition of the four page tip printed on a different color paper headed, "A Glossary of Aviation terms"; and the insertion of a few half tone pictures. The text matter and all prefatory matter was identical in each case.

7042

MR. HALE: The answer is objected to as not responsive and motion is made to strike it out.

x Q. 287. Did you compare each and every page of the books? A. No, sir.

x Q. 288. You did not compare each and every word, of course? A. No sir; just representative pages throughout the book,—same folios in each book.

7043

x Q. 289. What was the latest copyright appearing in the book which you purchased from William Barr? A. I don't know.

x Q. 290. You don't know the date of that edition? A. I don't know.

x Q. 291. Beyond the fact that the Webster's Condensed Dictionary used by the St. Louis Republic is a book belonging to the Merriam Company, you don't know of your own knowledge, what, if any, connection the Merriam Company had with the newspaper campaign upon that book to which you have referred? A. Yes, I do.

7044

x Q. 292. What do you know of your own knowledge? A. The advertisement in the St. Louis

Albert L. Swift—Cross.

7045

Republic states—it has been offered in evidence—makes that statement.

x Q. 293. Is that all you know about the connection of the Merriam Company with it? A. And that it is a Merriam book.

x Q. 294. That comprises your entire knowledge upon that subject, does it not? A. No sir.

7046

x Q. 295. What else do you know? A. In the St. Louis Republic of October 1st, the statement is made, "The Republic by special arrangement with the G. & C. Merriam Company of Springfield, Mass., offer", etc.

x Q. 296. That is the statement to which you referred before? A. Yes. Now, in addition to that, in my conversation with Mr. Knapp, the publisher of the St. Louis Republic, during the entire conversation he always spoke of it as their contract with the Merriam people.

7047

MR. HALE: I object to the witness's statement of what Mr. Knapp told him as incompetent, irrelevant and immaterial, and not responsive, and motion is made to strike it out.

7048

x Q. 297. Do you regard what you have been told or what you merely read in the newspapers as facts within your own knowledge? A. When substantiated by such facts as I have recited here.

x Q. 298. Have you now stated your full knowledge upon that subject? A. Mr. Murphy told me that he sold the Merriam book—

MR. HALE: I object to what Mr. Murphy told you.

THE WITNESS: I think that is responsive to your question.

Albert L. Swift—Cross.

7049

MR. HALE: I asked for knowledge, not for what you were told.

THE WITNESS: I will put in the answer and you can have it stricken out.

MR. HALE: I object to that as obviously taking advantage of the method of taking proofs in equity before an Examiner.

THE WITNESS: Mr. Murphy told me that he had sold the Merriam book to the St. Louis Republic and was there handling the campaign, and in the St. Louis Republic office, when I called on Mr. Knapp— 7050

MR. HALE: The statement of what Mr. Murphy said is objected to as irrelevant, incompetent and immaterial, and as not responsive, and motion is made to strike it out.

x Q. 299. Was there any special advertising matter prepared for what you have termed hotly contested campaigns conducted between rival newspapers in the same city? A. Yes; there was at St. Louis. 7051

x Q. 300. Did you prepare any of it? A. I assisted in it.

x Q. 301. Who else assisted in it? A. The editor of the St. Louis Post Dispatch.

x Q. 302. And you were on the ground at the time? A. Yes; helping him. 7052

x Q. 303. Was it customary in closing campaigns to require only one coupon from purchasers? A. No; until it got down inside of too few days for them to clip a full series. The closing campaign started twelve or fifteen days from the end of the campaign, and then coupons were required until there were too few days to clip

7053

Albert L. Swift—Cross.

those coupons; then the paper generally changed it to one coupon.

x Q. 304. Was it at all customary at any stage of the campaign for newspapers to supply dictionaries without coupons as in the case of the New York American, for example? A. I don't know of any such example.

7054

x Q. 305. An advertisement of the New York American has been offered in evidence, headed "Never mind the coupon" and there has been other evidence offered that the New York American supplied dictionaries without requiring the coupons. Was that at all customary? A. No, sir, that must have been a "slopover ad." That must have been after the close of the campaign, Mr. Hale,—left over books that had been purchased.

7055

x Q. 306. I presume the advertisement will speak for itself. A. I presume so. I don't just recall it.

7056

x Q. 307. You have spoken of certain letters which have been offered in evidence from purchasers of defendant's dictionaries through the newspapers, and said that some of them you received yourself. How did that happen? A. At St. Louis, the editor there had me in his office, at a little desk there and letters of that kind he would just hand over to me to prepare the amendatory advertising.

x Q. 308. How long were you there under those circumstances? A. I think I was there a month.

x Q. 309. Did that same thing ever occur at any other newspaper office? A. Oh, yes. It was a universal practice.

x Q. 310. Do you mean to say that you went around to other newspaper offices and received

Albert L. Swift—Cross.

7057

mail referring to these dictionaries? A. I don't mean to say that; but, as a matter of fact, I did call at a large majority of these places and it was quite usual for them to show me letters of that character.

x Q. 311. What is the greatest length of time you ever spent in any other newspaper office in connection with this campaign? A. I spent a month in Detroit.

x Q. 312. Where else? A. Probably ten days in Pittsburgh.

7058

x Q. 313. And shorter periods at other places? A. Shorter periods—I don't recall extensive periods at any other place—a day or two; different prominent places.

x Q. 314. This was after the campaign had started? A. Yes, sir, and before.

x Q. 315. And while they were in progress? A. Yes.

x Q. 316. Who paid you your salary for that period of time? A. The Syndicate Publishing Company.

7059

x Q. 317. And you were engaged on their business? A. Yes, in assisting the newspaper in securing circulation.

x Q. 318. Was any matter sent out or prepared by the Syndicate Publishing Company with a view of eliciting testimonial letters? A. Yes.

x Q. 319. And suggestions were made as to features to be noted in the matter thus sent out? A. In books sent out, quite often the paper composed a little slip asking for the recipient of the book to make any comments thereon that the facts warranted.

7060

x Q. 320. And that slip contained suggestions? A. It contained different headings and features of the book.

7061

Albert L. Swift—Cross.

x Q. 321. In the advertisement in the Springfield Union of October 21st, I notice a detailed comparison of the Syndicate Publishing Company's book and the Webster's Condensed Dictionary. Was that a special advertisement for the Springfield Union, or was that an advertisement universally employed in your campaigns? A. It was not universally employed.

7062

x Q. 322. Was that or a similar advertisement employed only in cases of what you have termed "hotly contested campaigns" in cities where rival books were handled by rival papers? A. No, it was not used in those cities. There was no contest in Springfield, and—for instance, I recall that it was not used in St. Louis.

x Q. 323. What other places, if any, was it used, besides Springfield? A. I don't know.

x Q. 324. You don't recall any? A. No.

7063

x Q. 325. I will refresh your recollection. Was not a similar advertisement comparing the two books used in Peoria, Illinois? A. Yes.

x Q. 326. That was an instance of what you term a "hotly contested campaign" between the rival books? A. No, we didn't have much of a contest there from the other books.

x Q. 327. There was a contest there? A. They were running at the same time we were, but they soon quit.

7064

x Q. 328. Before making arrangements with newspapers to undertake the distribution of these books, did you explain to them that the book had previously been published under the name of the Crown dictionary? A. No, sir.

x Q. 329. Did you explain to them what, if any, connection there was between it and any Webster's Dictionary? A. No, sir, they always

sent for a sample and that statement occurred on the title page.

x Q. 330. You mean, based upon the unabridged dictionary of Noah Webster and so forth? A. Yes.?

x Q. 331. And beyond that you made no explanation? A. No, sir.

x Q. 332. And none were ever asked for? A. None at all. I told every paper that we published the book. All papers thoroughly understood that.

7066

x Q. 333. They naturally understood who they were dealing with? A. Yes.

x Q. 334. Did any of them question your right to publish the book? A. No, sir.

x Q. 335. I presume they all assumed it to be a genuine Webster's Dictionary; is that correct? A. I cannot assume. They were all delighted, I know.

7067

x Q. 336. You have stated a number of papers where you say this man, Murphy, introduced the Merriam Company's book. Do you mean anything more than that the Webster's Condensed Dictionary, published by the Merriams, was used by those newspapers? A. Murphy gave me the information himself, and spoke of it.

x Q. 337. So your testimony is based wholly upon what Mr. Murphy told you, in that regard?

A. And the finding of the Merriam book on sale by the different papers.

7068

x Q. 338. Did you ever go to headquarters and complain to the Merriam Company itself that your advertisement had been copied by various newspapers in connection with the condensed dictionary? A. Yes.

7069

Albert L. Swift—Re-direct.

x Q. 339. When? A. On my visit to Springfield.

x Q. 340. In October, 1911? A. In October, yes.

x Q. 341. Never before? A. No, sir.

x Q. 342. What did they say to you in that connection then? A. Mr. Washburn or Mr. Baker said they knew nothing about it.

7070

x Q. 343. This is the visit to which you have testified when you were formerly on the stand and which was brought about by reason of the warning letter which the Merriam Company sent to the Syndicate Publishing Company? A. By reason of their failure to answer the letter, we sent in reply to that, so that we went up.

x Q. 344. It was, however, the only occasion on which you went to Springfield? A. The only occasion, yes.

7071

RE-DIRECT EXAMINATION by Mr. Carroll:

R-D. Q. 345. Did you ever see the advertisement referred to by Mr. Hale as having appeared in the New York American containing the statement: "Never mind the coupon"?

MR. HALE: The question is objected to as irrelevant and immaterial, as the advertisement will speak for itself, and that particular advertisement is in evidence.

7072

A. I don't recall it. If the advertisement is in evidence it is undoubtedly a little clean-up ad of the American; some books that they had left over and desired to get rid of after the campaign closed. It is not a usual procedure.

R-D. Q. 346. Was it ever a part of the procedure in these campaigns suggested by you to the newspapers? A. Never.

Albert L. Swift—Re-cross.

7073

R-D. Q. 347. What were you doing in the newspaper offices which you say you were in for from two or three days at a time to a longer period up to a month, during which period you have testified you were paid by the publishing company?

MR. HALE: Objected to as irrelevant and immaterial.

A. My work was in the circulation department of the paper, in assisting them to gain subscribers by this dictionary campaign, mapping out and showing them the routine done by the previous newspapers that have been successful. In fact, working right in their circulation department.

7074

RE-CROSS EXAMINATION by Mr. Hale:

R-x Q. 348. No one was required to subscribe to any of these newspapers for any period of time in order to obtain the dictionary? A. Not always; sometimes. Some papers offered it that way.

7075

R-x Q. 349. Will you point out any advertisement offered in evidence in which there was any requirement that people desiring dictionaries must subscribe to the paper? A. I don't know of that style here. I know of cases of that kind. I could give you papers that did it that way.

R-x Q. 350. At what date? A. The Cleveland Plain Dealer—during the summer of 1911.

7076

R-x Q. 351. How long did you have to subscribe for that paper to obtain a dictionary? A. They offered it both ways, on the coupon plan as the usual plan—for so many coupons and so much money, and if you subscribed for three months you paid less money, at the time you took the book.

7077

Albert L. Swift—Re-cross.

R-x Q. 352. On the coupon plan, sometimes six coupons were required and sometimes only three; is that not correct? A. Well, no; I think our campaign as laid before the papers always was six, sometimes seven.

R-x Q. 353. And you don't recall any where only three were required? A. No; I don't. If there are, they must be isolated cases.

7078

R-x Q. 354. As in the case of the New York American people desiring one of these dictionaries, where they were only required to purchase six Sunday papers in order to obtain six coupons, were they not? A. That is all.

7079

R-x Q. 355. And out of the amount termed expense bonus, ninety-eight cents, eighty-one cents or forty-eight cents, the newspaper had to be paid for its advertising space and other expenses connected with the distribution, and the Syndicate Company had to be paid for its book. It had all to come out of what the dictionary coupon calls the expense bonus; is that correct? A. No, sir.

7080

R-x Q. 356. In what respect is it not correct? A. Leaving out the feature of the increased circulation that the paper got, which much more than offset the expense of any nature that they were put to. For instance, the Pittsburgh Post had a circulation of twenty-five thousand. They put out forty-one thousand books on their sales to their subscribers and increased their circulation over twenty-five per cent by the plan.

R-x Q. 357. How many coupons did that paper require? A. Six.

R-x Q. 358. What does that paper sell for? A. It sells for one or two cents.

George W. Ogilvie—Direct.

7081

BY MR. CARROLL:

R-D. Q. 359. I show you a page cut from the St. Louis Post Dispatch of November 8th, 1911, and ask you if that is one of the advertisements of the Syndicate Publishing Company, sold by the St. Louis Post Dispatch? A. Yes.

MR. CARROLL: I offer that in evidence.

BY MR. HALE:

7082

Q. There were numerous other advertisements issued by the St. Louis Post Dispatch, both prior and subsequent to the time last mentioned, were there not? A. The same applies to all these papers that have been offered in evidence.

DEPOSITION CLOSED.

(Signature and oath of witness waived by consent.)

7083

Adjourned to June 27th, 1912, at 11 o'clock A. M.

NEW YORK, June 27th, 1912.

Met pursuant to adjournment.

Present: Counsel as before.

7084

GEORGE W. OGILVIE, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. What is your age? A. Fifty-two.

7085

George W. Ogilvie—Direct.

Q. 2. Residence? A. New York City.

Q. 3. And occupation? A. I was formerly a publisher. I am at present not engaged in business.

Q. 4. How many years were you in the publishing business? A. Twenty-five—twenty-eight or thirty. I have forgotten exactly—let me see—twenty-eight or thirty years.

7086

Q. 5. About what date did you go into the publishing business? A. 1882, I think it was, or 1884, I went in business for myself.

Q. 6. Have you during all or part of that time made a special study of dictionaries? A. Yes, and before that.

Q. 7. What has that study consisted of? A. Well, that is a pretty broad question. I don't know that I can understand it.

7087

Q. 8. How have you studied dictionaries? A. By referring to them and making a close examination of them and looking them over with the idea in mind of afterwards or sometime publishing a dictionary of the English language.

Q. 9. When did this study begin? A. About 1875 or 1876.

Q. 10. Did you ultimately publish a dictionary of the English language? A. I did.

Q. 11. When was that? A. The first in 1890; later, a revision of that work, in 1904.

7088

Q. 12. What was the name of the book you published in 1890? A. Webster's dictionary.

Q. 13. When did you begin the preparation of the book which you have just testified was a revision of that Webster's dictionary and was ultimately published in 1904? A. About 1891.

Q. 14. How long did that preparation continue? A. Thirteen years.

George W. Ogilvie—Direct.

7089

Q. 15. What did it consist of? A. In collecting material, revising it, doing editorial work on different parts of the dictionary which I considered myself competent to do. I may say incidentally I have done a great deal of compiling, some of my books, one in particular having had a sale of three million and one-half copies.

Q. 16. What was that? A. Conklin's Manual of Useful Information, and others of my compilations totalled sales of approximately ten million copies.

7090

Q. 17. Can you name these other compilations?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. Conklin's "Writing Desk Book"; Conklin's "World's Best Proverbs"—I should say fifteen books published under the name of "Conklin" of various titles.

7091

Q. 18. In the preparation of the revision of the Webster's dictionary which you first published in 1890, did you from time to time have assistants? A. Yes.

Q. 19. What was the number of those assistants? A. They ran from one to a hundred as the time progressed; approximately one hundred; might have been a few more or a few less.

Q. 20. Did you keep any accurate account of the expenses involved in the revision and editing of the book you have testified you published in 1904? A. Not in any of the twelve years preceding the last or thirteenth year; just simply spent the money—part of my daily expense.

7092

Q. 21. Did you in the last or thirteenth year keep an accurate account of these expenses? A. Approximately accurate.

7093

George W. Ogilvie—Direct.

Q. 22. What did that amount to in that year?

A. About \$70,000.

Q. 23. Can you give me some estimate of the expense prior to that time?

MR. HALE: Objected to as wholly irrelevant and immaterial.

7094

A. I would not attempt to do so accurately. It might have been as much more or more than as much more.

Q. 24. You think it probably was?

MR. HALE: Objected to as calling for a guess.

A. I do.

7095

Q. 25. What was the name of this dictionary when it was finally published. A. It was published under various titles; Webster's Imperial Dictionary was the title selected first.

Q. 26. Was it based upon the Webster's dictionary which you say you first published in 1890?

A. It was.

Q. 27. Was this a large or unabridged Webster's dictionary? A. The most complete one that had ever been published up to the date of its issue.

7096

MR. HALE: The answer is objected to as incompetent, irrelevant and immaterial and not responsive, and as a mere expression of opinion by the witness.

Q. 28. Did you advertise this book from time to time? A. Extensively.

Q. 29. Can you state how much you expended in this advertising?

George W. Ogilvie—Direct.

7097

MR. HALE: Objected to as irrelevant and immaterial.

A. Approximately one hundred thousand dollars.

Q. 30. If \$100,000 is not exactly correct, is the amount more or less? A. Maybe more or less; approximately. I remember at one time having paid \$1,500 to Everybody's Magazine for one issue. That is merely indicative of how the total might have exceeded \$100,000.

7098

Q. 31. During approximately what years was this expenditure of \$100,000 for advertising made? A. From 1903 to 1908. I began the advertising of the dictionary before it was published.

Q. 32. And this advertising was all under the name of "Webster's Imperial" or— A. Or "Webster's Universal."

Q. 33. Or "Webster's Universal" dictionary? A. Yes.

7099

Q. 34. What Webster's dictionaries have you known of?

MR. HALE: Objected to unless the books are produced and identified.

A. There is a standard book of reference published, called the "United States Catalogue," which assumed to give the current—or the list of books that have current circulation.

Q. 35. Have you examined that United States Catalogue? A. I have.

7100

Q. 36. And what Webster's dictionaries did you find in it?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for pure hearsay.

7101

George W. Ogilvie—Direct.

A. A total of fourteen not published by the G. & C. Merriam Company—

MR. HALE: May I see the paper to which the witness is referring, please?

MR. CARROLL: Surely. (Handing paper.)

7102

A. It gives a list of eleven Webster's dictionaries not published by G. & C. Merriam Company, which is only a partial list, however, as I know of many others.

Q. 37. What other Webster's dictionaries do you know of? A. I know of a total of sixty-seven Webster dictionaries, not published by G. & C. Merriam Company.

7103

Q. 38. Can you give that list? A. I cannot give the titles of all of the books. I can give the names of the publishers of the number of books that have been published under the name of "Webster," so far as my present knowledge goes. There may be more than sixty-seven, but I know of sixty-seven.

7104

MR. HALE: This line of examination is objected to as incompetent, irrelevant and immaterial, unless the books are produced, and especially unless the titles of the books are produced. I object to the witness describing, in an indefinite manner, books of various publishers, as simply Webster's dictionaries. The testimony as given in that manner is too general to be of any value or to be tested by cross examination.

Q. 39. Will you give the list of publishers as accurately as you can of the sixty-seven Webster's dictionaries? A. Many of the dictionaries published by G. & C. Merriam Company, many years

George W. Ogilvie—Direct.

7105

ago, have merely the title "Webster's Dictionary" on their back. That is true of some of the dictionaries that are included in this list. I will endeavor to give, as far as I can, the titles—the sub-titles of the dictionaries, or the distinguishing words that may be inserted between "Webster's" and "Dictionary," or preceding the word "Webster": Myles Vest Pocket Dictionary, published by E. E. Myles of South Lancaster, Massachusetts; M. A. Donahue of Chicago, published four Webster's dictionaries, the original Webster's reprint, Webster's Vest Pocket Dictionary, and two others, the titles of which I am slightly in doubt about.

7106

Q. 40. Have these two others the name "Webster" in their title? A. They have. All of these dictionaries have the name Webster in the title, that are distinguished by some other word—that is the sixty-seven to which I referred. W. B. Conkey Company, two Webster's dictionaries, one of which is Webster's Original Unabridged, and the other is Webster's Business and College Dictionary. L. W. Walters Company, one Webster's dictionary. David McKay, of Philadelphia, one Hill's Vest Pocket Webster. Laird & Lee, Chicago, nine Webster's dictionaries. Grimm's Webster's, Salva Webster's, Webster's New Standard Dictionary.

7107

Q. 41. Please give the publishers? A. I am. These are all Laird & Lee. Collegiate Edition. Webster's New Standard Dictionary, Common School Edition. Webster's New Standard Dictionary, High School edition. Laird & Lee's Vest Pocket Webster's dictionary—and some others, the distinguishing titles of which I do not recall.

7108

Q. 42. All of this last list is published by Laird

7109

George W. Ogilvie—Direct.

7110

7111

7112

& Lee? A. All published by Laird & Lee, comprising a total of not less than nine and possibly more—but of nine I am certain. The Werner Company of Akron, Ohio, one Webster's dictionary. Saalfeld Publishing Company, Akron, Ohio, eight Webster's dictionaries, the titles of which are Webster's Encyclopedic dictionary, Webster's Vest Pocket Dictionary, Webster's New Unabridged Dictionary, Webster's Imperial Dictionary, Webster's InterCollegiate Dictionary, Webster's Adequate Dictionary, Webster's Sterling Dictionary, Webster's Original Unabridged. Thompson & Thomas, Chicago, Webster's School and Office Dictionary, and Webster's Vest Pocket Dictionary. J. B. Lippincott Company of Philadelphia, three Webster's dictionaries; Harper & Brothers, two Webster's dictionaries. George W. Ogilvie, five Webster's dictionaries. George W. Ogilvie & Company, one Webster's dictionary. A. L. Burt, one. Hurst & Company, one. People's Publishing Company, one. Hampden Publishing Company, one. Reilly & Britton, who are agents for G. & C. Merriam Company, published one Webster's Dictionary, not issued by G. & C. Merriam Company. W. R. Van Sant, one. Cupples & Leon, one. John C. Winston Company, Philadelphia, one. I. & M. Ottenheimer, one Vest Pocket Webster. Lamont O'Donnell & Company, one. Mutual Publishing Company, one. W. B. Bechtold, one. Frank Brothers, one. R. S. Peale, one. Excelsior Publishing Company, one. J. Duffy's Sons, one. J. & D. West, one. Mason Brothers, one. Ivison, Blakeman, Taylor & Company, one. F. J. Huntington & Company, one. White & Sheffield, one. White, Gallagher & White, two. Loomis Brothers,

George W. Ogilvie—Direct.

7113

one. Henry G. Allen & Company, one. The Syndicate Publishing Company, two. Unknown publishers, two.

Q. 43. What were the titles of those books? A. I cannot guess that. I know there are two such books, however. Just a moment. I think I can help you on that (examining paper). No, simply a Webster's dictionary. I cannot give it to you—making a total of sixty-nine instead of sixty-seven as I said before—making a total of sixty-nine Webster's dictionaries not published by G. & C. Merriam Company, and forty publishers other than G. & C. Merriam Company have issued dictionaries bearing the name of "Webster" in their title.

7114

MR. HALE: I should like to see the papers to which the witness is referring and testifying from.

(The papers were handed to Mr. Hale.) 7115

Q. 44. Do you know the date of the first publication of the Hurst Webster's Dictionary to which you have referred? A. In the '70's. I think it was 1879; certainly in the 1870's.

Q. 45. Did this book have a large sale to your knowledge? A. I have seen it in hundreds of bookstores myself. It must have had a very large sale.

Q. 46. When was the first Webster's dictionary published? A. In 1806. 7116

Q. 47. Do you know the name of the publishers of that dictionary? A. I do not.

Q. 48. Was that dictionary copyrighted? A. It was.

Q. 49. When did the copyright expire? A. 1834; that is the copyright and its renewal. The

7117

George W. Ogilvie—Direct.

copyright at that time being fourteen years, with a renewal of fourteen years.

Q. 50. Have you in your possession cards obtained from the Library of Congress? A. I have.

Q. 51. Showing Webster's dictionaries in the Library of Congress not published by the G. & C. Merriam Company? A. I have.

7118 Q. 52. And bearing a date on their title pages prior to 1889? A. Yes; I have sixteen of such cards.

Q. 53. Will you produce those cards? A. (The witness produces cards.)

MR. CARROLL: I offer them in evidence. (By consent the cards are spread at length upon the record, and are as follows:)

WEBSTER, NOAH, 1758-1843.

7119 A pronouncing and defining dictionary of the English language, abridged from Webster's American Dictionary. By Chauncey A. Goodrich

To which are added, Walker's Key to the pronunciation of classical and Scripture proper names; A vocabulary of modern geographical names..(by J. Thomas). Philadelphia, J. B. Lippincott & Co., 1856: XXIII, (1), 610 p. 23 cm.

1. English language—Dictionaries. I. Goodrich, Chauncey Allen, 1790-1860 ed. II. Thomas, Joseph, 1811-1891. III. Walker, John, 1732-1807.

7120

10-29034†

Library of Congress. PEL826. W 4G 6. 1856.

WEBSTER, NOAH, 1758-1843.

An American dictionary of the English language; exhibiting the origin, orthography, pro-

George W. Ogilvie—Direct.

7121

nunciation, and definitions of words. By Noah Webster, LL. D. Abridged from the quarto ed. of the author. To which is added a synopsis of words differently pronounced by different orthoepists. Rev. and enl. by Chauncey A. Goodrich. Philadelphia, J. B. Lippincott & Co., 1867.

vii, (xi)-xxii, (2), 1319 p. 24 cm.

Two columns to the page.

I. Goodrich, Chauncey Allen, 1799-1860, ed.

7122

Library of Congress.

4-20107.

WEBSTER, NOAH, 1758-1843.

A primary school dictionary of the English language, explanatory, pronouncing, and synonymous. With an appendix containing various useful tables. Mainly abridged from the latest ed. of the American dictionary of Noah Webster, LL. D., by William G. Webster and William A. Wheeler—New York, Ivison, Phinney, Blakeman & Co.; Philadelphia, J. B. Lippincott & Co.; (etc., etc.) 1868.

7123

xii, 13-352 p. illus. 16 cm.

1. English language—Dictionaries. I. Webster, William Greenleaf, 1805-1869, ed. II. Wheeler, William Adolphus, 1833-1874, joint ed.

10-2904

Library of Congress.

PE1628.W4W3 1868

7124

WEBSTER, NOAH, 1758-1843.

Webster's handy dictionary. A handy dictionary of the English language. .from the latest edition of the large dictionary of Noah Webster, LL.

7125

George W. Ogilvie—Direct.

D., by Loomis J. Campbell. New York, Ivison, Blakeman, Taylor & Co., 1878.

320 p. illus. 13-1/2 cm.

1. English language—Dictionaries. I. Campbell, Loomis Joseph. 10-29028+

Library of Congress.

PE1628.W4C3

7126

WEBSTER, NOAH, 1758-1843.

An American dictionary of the English language. By Noah Webster, LL. D. Abridged from the quarto ed. of the author, to which are added a synopsis of words differently pronounced by different orthoepists; and Walker's Key to the classical pronunciation of Greek, Latin, and Scripture proper names. Rev. and enl. by Chauncey A. Goodrich. With the addition of a vocabulary of modern geographical names, with their pronunciation. New York, Harper & Brothers, 1853.

7127

xxii, (2), 1152, viii, (9)-113 p. 25 cm.

At head of title: This rev. ed. contains all the words in the quarto ed., and also an arrangement of synonyms under the leading words.

The Key has special t.-p. and paging.

7128

1. English language—Dictionaries. I. Walker, John, 1732-1807. II. Goodrich, Chauncey Allen, 1790-1860, ed. Library of Congress. PE1628.W4G6 1853.

WEBSTER, NOAH, 1758-1843.

A dictionary of the English language; abridged from the American dictionary, for the use of pri-

George W. Ogilvie—Direct.

7129

mary schools and the counting house. By Noah Webster, LL.D., 19th ed. New York, F. J. Huntington & Co., 1840.

2 p. l, vi, (7)-536. p. 14 x 13½ cm.

1. English language—Dictionaries.

10-29035†

Library of Congress. PE1628. W4H7 1840.

7130

WEBSTER, NOAH, 1758-1843.

A dictionary of the English language; abridged from the American dictionary, for the use of primary schools and the counting house. By Noah Webster, LL.D. 19th ed. New York, F. J. Huntington & Co., 1842.

2 p. l, vi, (7)-536 p. 15 x 13½ cm.

1. English language—Dictionaries.

10-29036†

Library of Congress. PE1628. W4H7 1842.

7131

WEBSTER, NOAH, 1758-1843.

An American dictionary of the English language; exhibiting the origin, orthography, pronunciation, and definitions of words. By Noah Webster, LL.D. Abridged from the quarto ed. of the author; to which are added, a synopsis of words differently pronounced by different orthoepists; and Walker's Key to the classical pronunciation of Greek, Latin, and Scripture proper names. Stereotype ed. New York, White & Sheffield, 1839.

xxiii (1), 1011 p. 25 cm.

The Key has special t.-p.

7132

1784

7¹³³

George W. Ogilvie—Direct.

1. English language—Dictionaries.

1. Walker, John, 1732-1807.

Library of Congress

PE1628.

W3 1839

11-155†

WEBSTER, NOAH, 1758-1843.

7¹³⁴

...An American dictionary of the English language... By Noah Webster, LL.D. Abridged from the quarto ed. of the author, to which are added a synopsis of words differently pronounced by different orthoepists; and Walker's Key to the classical pronunciation of Greek, Latin, and Scripture proper names. Rev. and enl., by Chauncey A. Goodrich... With the addition of a vocabulary of modern geographical names, with their pronunciation. New York, Harper & brothers, 1852.

7¹³⁵

xxii, (2), 1152, viii, (9)-113 p. 24½ cm.

(continued on next card).

11-154†

WEBSTER, NOAH, 1758-1843.

7¹³⁶

A dictionary of the English language; abridged from the American dictionary, for the use of primary schools and the counting house. By Noah Webster, LL.D. New York, White, Gallaher & White, 1831.

4. p. l, vi. (7)-532 p. 14 x 13½ cm.

1. English language—Dictionaries.

10-29052†

Library of Congress. PE1628. W4W9 1831.

.....Copy 2.

George W. Ogilvie—Direct.

7137

WEBSTER, NOAH, 1758-1843.

A dictionary of the English language; abridged from the American dictionary, for the use of primary schools and the counting house. By Noah Webster, LL.D. New York, White, Gallaher & White, 1830.

4 p. l., vi., (7)-532 p. 15 x 13½ cm.

1. English language—Dictionaries.

11-149†

7138

Library of Congress. PE1628. W4W9 1830.

WEBSTER, NOAH, 1758-1843.

An American dictionary of the English language; exhibiting the origin, orthography, pronunciation, and definitions of words. By Noah Webster, LL.D. Abridged from the quarto ed. of the author; to which are added, a synopsis of words differently pronounced by different orthoepists. And Walker's Key to the classical pronunciation of Greek, Latin, and Scripture proper names. (New York, c1857).

7139

xxiii, (1), 1011 p. 25 cm.

The Key has special t.p., dated 1838.

Title edition, originally published 1838.

1. English language—Dictionaries.

1. Walker, John, 1832-1807.

11-152†

7140

Library of Congress. PE1628. W3 1857.

7141

George W. Ogilvie—Direct.

WEBSTER, NOAH, 1758-1843.

...An Amercian dictionary of the English language... 1852. (Card 2).

At head of title: This rev. ed. contains all the words in the quarto ed., and also an arrangement of synonyms under the leading words.

The Key has special t.-p. and paging.

1. English language—Dictionaries.

7142

I. Walker, John, 1732-1807 II.

Goodrich, Chauncey Allen, 1790-1860, ed.

11-154†

Library of Congress. PE1628. W4G6 1852.

.....Copy 2.

Imprint date of Key, 1853.

WEBSTER, NOAH, 1758-1843.

7143

A dictionary of the English language; compiled for the use of common schools in the United States. By Noah Webster, esq. New Haven, Sidney's press, printed for J. and D. West, Boston; (etc., etc.) 1807.

v. (1) 306 p. 16½ cm.

1. English language—Dictionaries.

11-148†

Library of Congress. PE1628. W4W85.

WEBSTER, NOAH, 1758-1843.

7144

A critical pronouncing dictionary of the English language. New and improved ed... By Noah Webster, LL.D. Cor. and improved, by James W. Kavanagh... Dublin, J. Duffy, Sons & Co., 1872.

George W. Ogilvie—Direct.

7145

vi. 535 p. front (port. group) 19½ cm.

1. English language—Dictionaries.

1. Kavanagh, James W.

10-29029†

Library of Congress.

PE1628. W4k3.

WEBSTER, NOAH, 1758-1843.

7146

Common-school pronouncing dictionary of the English language. Abridged from the American dictionary of Noah Webster, LL.D., by William G. Webster . . . New York, Mason brothers (c1857). vii, (8)-320 p. 16 cm.

1. English language—Dictionaries.

1. Webster, William Greenleaf,

1805-1869, ed.

10-29047†

Library of Congress. PE1628. W4W35. 1857.

7147

Q. 54. Is it customary in the trade when a copyright expires of a book of references, if that book of reference had any copyright, for various editors and publishers to take the books of reference and revise them and bring them down to date?

MR. HALE: I object to that as incompetent, irrelevant and immaterial.

A. It is.

7148

Q. 55. Can you name some instances of that custom?

MR. HALE: Same objection.

A. Encyclopedia Britannica, Webster's dictionary, Chitty's Pleadings, which is published un-

7149

George W. Ogilvie—Direct.

der exactly the same conditions as Webster's dictionary, issued by G. & C. Merriam, they having taken the uncopyrighted edition and re-edited it to date and published it under their own name as publishers, but retaining the name "Chitty's Pleadings." The Holy Bible also, which was published by G. & C. Merriam Company, without any authority, I think, from the editors.

7150 You need not take that down.

MR. HALE: Yes, I want everything the witness says taken on the record.

A. (Continuing). That was not testimony, and I may also say I have the honor of publishing—

Q. 56. Have you in the last thirty years had occasion to observe advertising by various publishers of Webster's dictionaries in connection with their books? A. Yes, I followed that very closely.

7151

Q. 57. Why have you followed it so closely? A. Having in mind the intention of publishing a Webster's dictionary at some time, and keeping informed of everything connected with not only Webster's but all other dictionaries that I could get any information in regard to.

7152

Q. 58. What varieties of Webster's dictionaries? A. In reply to Webster's dictionary, everything in connection with which a dictionary could be sold, I think, has been exploited, as far down the line as typewriter ribbons, and as far up the line as suits of clothes and household furniture, and trade schools, colleges, individuals.

Q. 59. Have you seen Webster's dictionaries advertised in the newspaper? A. Very exten-

George W. Ogilvie—Direct.

7153

sively. Whole pages have been devoted to it. Half pages innumerable. Quarter and eighth pages, so many that it would be impossible to name them.

Q. 60. Have you seen Webster's dictionary advertised in magazines? A. Extensively. I have done a good deal of it myself.

Q. 61. Have you seen Webster's dictionaries advertised in catalogues of mail order houses? A. Sears-Roebuck & Company, John M. Smyth Company, Cash Buyers' Union, the Book Supply Company, Sims, Wilson & Sims—all of whom do a very extensive mail order business and issue millions of catalogues a year. One of the concerns alone, Sears-Roebuck & Company issue approximately seven million—

7154

MR. HALE: I object to the witness stating what is obviously a matter not within his own personal knowledge, but pure hearsay or surmise.

7155

A. (Continuing). Have devoted space equal to a full page—from that down to a quarter of a page, exploiting Webster's dictionaries, some of which have been published by G. & C. Merriam Company, but most of which were published by other houses.

MR. HALE: The last statement is objected to as a mere conclusion of the witness

7156

Q. 62. Have any or all of the forty publishers of Webster's dictionaries whom you have listed advertised their books by means of canvassers?

A. Not all. Some of them were published so long ago that I never heard of them until I got that list from the copyright office at Washington,

7157

George W. Ogilvie—Direct.

In fact, some of them were published before I was born. Those that I know of have exploited their publication by every means at their command.

7158

Q. 63. Will you name now those publishers who have used canvassers to your knowledge? A. That is a very difficult matter to do, for the reason that a publisher may have on his books—I am applying it to myself—a certain list of customers and dispose of their books in any manner they see fit, irrespective of whether it is over your counter, as a premium or by canvassing. I believe it to be impossible for any publisher to tell definitely just what method was adopted to dispose of the publication after they left his hands.

7159

Q. 64. From your own experience in advertising Webster's dictionaries, are you familiar with the prices charged by various newspapers and magazines for their advertising space? A. I could not give you the rates at this moment or at this time, because during the past four years I have not followed that; but prior to that I was perfectly familiar with them.

7160

Q. 65. Can you, therefore, estimate the cost of the advertising which you have personally seen inserted in various advertising mediums by other publishers than G. & C. Merriam Company, since you have been observing this advertising?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for a mere guess or conclusion of the witness, and not for any facts within his knowledge.

A. I would like to amplify my last answer by this statement: That newspaper rates and mag-

George W. Ogilvie—Direct.

7161

azine rates have, generally speaking, increased. One such instance is the Ladies' Home Journal. Another is the Saturday Evening Post; and so on through a long list of publications. Any estimate that I would make at the present time as to the value of advertising that I have seen in the past five years would be very much less in my judgment than the actual amount of cash which would be necessary to expend to purchase it, and basing my belief on my former knowledge and my present knowledge of the increase in the cost of advertising in newspapers and magazines, I should say that not less than five million dollars worth of it have been under my observation.

7162

Q. 66. This five million dollars which you speak of is advertising of other publishers than the complainant in this suit? A. Every penny of it. I have seen some of the Merriam's advertising, and I eliminate that from the estimate. I have seen very little of Merriam's advertising as compared with the others, however,—a very small percentage.

7163

Q. 67. Was much of this advertising before approximately 1890? A. Not a great deal of it. Some; but not a great deal of it.

Q. 68. Did the volume of advertising in connection with Webster's dictionaries increase materially about 1890? A. By leaps and bounds.

Q. 69. What was the occasion of that? A. The copyright having expired on a certain Webster's dictionary, the field was open for any who wished to engage in its publication, and it was exploited from coast to coast.

7164

Q. 70. Did you observe the advertising of the G. & C. Merriam Company prior to 1890? A. Yes.

George W. Ogilvie—Direct.

7165

Q. 71. Had it been extensive?

MR. HALE: Objected to as calling for a mere conclusion, of a hostile witness.

A. Not so far as my observation is concerned.

Q. 72. Would you have observed it if had been extensive? A. I have no doubt I would.

7166

MR. HALE: The answer is objected to as a mere guess, and motion is made to strike it out.

7167

Q. 73. What do you think the reputation of the word "Webster" to-day—if it had any in the minds of the general public—depends upon? A. It depends somewhat upon the work of Noah Webster. It depends very largely upon the amount of advertising that has been done for Webster's dictionaries by publishers other than those who at one time had a monopoly on its publication.

7168

Q. 74. Do I understand you to say that one publisher ever had a monopoly in the publication of any Webster's dictionary? A. During the life of any copyright of any one book, the publishers may have a monopoly. The first Webster I know of was published in 1806. The next one I know anything about was published in 1807. So at least for one year between 1806 and 1807 a monopoly existed in the publication of Webster's dictionary, so far as my knowledge is concerned. There may have been some competition even at that time.

Q. 75. Was that what you are referring to? A. Exactly. Certainly there was no monopoly at the time the Webster's dictionary was taken over by the G. & C. Merriam Company, the right to Web-

George W. Ogilvie—Direct.

7169

ster's name on a title to a dictionary having expired nine years before they became interested in its publication.

MR. HALE: The last answer is objected to as incompetent, irrelevant and immaterial, and because not based upon facts within the knowledge of the witness, but merely his own argumentative statements of his conclusions.

7170

A. (Continuing). I may add that the statement is based upon a pamphlet issued by G. & C. Merriam Company stating the time they took over the publication of Webster's dictionary from his executors in 1843 or thereabouts, the copyright having expired on the first dictionary nine years before that date.

Q. 76. Have you made any attempt to introduce your dictionary in the schools? A. Some:

7171

Q. 77. Can you name any large cities where your dictionary is approved by school boards and distributed to the schools? A. Cincinnati, Philadelphia, Yonkers and doubtless others, the names of which have escaped me or with which I am not familiar, because I paid no attention to that during the last four years.

Q. 78. What was the title of the book which was introduced in these schools? A. Webster's Universal or Webster's Imperial; I don't know which title was selected.

7172

Q. 79. When was your book introduced in the City of Yonkers in the schools? A. Prior to 1908.

Q. 80. After the book was introduced, did a representative of the G. & C. Merriam Company

7173

George W. Ogilvie—Direct.

approach the president of the Board of Education in Yonkers and attempt to have the book thrown out? A. Correspondence along that line was indulged in between the Merriam Company and the superintendent.

7174

Q. 8. When the books which were originally purchased by the Yonkers School Board were worn out, what book did they replenish their supply with? A. Webster's Imperial Dictionary. They were perfectly satisfied with the first ones they had. They bought more of them.

Q. 82. This was after the correspondence with the G. & C. Merriam Company? A. After the correspondence with the G. & C. Merriam Company, and after the publication of the latest edition of Webster's International Dictionary by G. & C. Merriam Company.

7175

Q. 83. Are you familiar with the advertising of the Saalfield Publishing Company of Akron, Ohio, in connection with the Webster's dictionaries published by them? A. To some extent.

Q. 84. Can you state approximately what that advertising has cost?

MR. HALE: Objected to as irrelevant and immaterial.

7176

A. I can state approximately what that has cost, the figures in connection with which I have seen; but I should say that it was not—that that figure was not more than twenty-five or thirty per cent of the total because I have not seen the complete figures. But those I have seen would indicate an expenditure of approximately \$25,000, and there may have been three or four times as much as that.

George W. Ogilvie—Cross.

7177

Q. 85. But that much you are sure of? A. Yes.

Q. 86. \$25,000? A. Approximately that.

Q. 87. Did you make any particular effort to introduce your book in the schools? A. Yes, for a time only. . Then I traveled along the line of least resistance and sold more books.

Q. 88. Then, for the latter part of the time when you were actively engaged in the publication of Webster's dictionaries, you did not make any special effort to have them introduced in the schools? A. Personally, no; but I had men who were selling the books to schools, and school teachers in the various cities.

7178

CROSS EXAMINATION by Mr. Hale:

x Q. 89. You are the Mr. Ogilvie who was engaged in litigation with the Merriam Company in the First Circuit of Boston? A. I am the Mr. Ogilvie who brought a suit against the Merriam Company in the First Circuit.

7179

x Q. 90. And the defendant in the cross bill in that suit? A. And the defendant in the cross bill.

x Q. 91. Did you also publish a Webster's dictionary which was involved in the suit of the Merriam Company against the Texas Siftings Company some time back in the year 1893, about?

MR. CARROLL: Objected to as irrelevant and immaterial.

7180

A. I cannot see that that has anything to do with this matter.

x Q. 92. Never mind about that. Did you publish that book and are you the Ogilvie referred to by name in the opinion of Judge Shipman in

7181

George W. Ogilvie—Cross.

that case? A. Are you asking me to draw a conclusion, or to state a fact, because I don't know anything about the opinion rendered by Judge Shipman. If you will permit me to read it, I will perhaps be able to answer the question.

x Q. 93. Did you publish the Webster's dictionary involved in that suit? A. I have answered that question.

7182

x Q. 94. Please answer it once more? A. I cannot see that it has any bearing on this matter.

MR. HALE: The answer is objected to as not responsive and motion is made to strike it out.

x Q. 95. The question is repeated? A. The answer is repeated.

7183

x Q. 96. Is that the only answer you will make to that question? A. That is the only answer I will make to that question until I know more about what the question implies. If you can produce the dictionary I can tell you whether that is the dictionary I am publishing. I am not going to make any definite statement about something about which I am not certain.

x Q. 97. You know something about that suit, do you not? A. I know something about many of these suits started by G. & C. Merriam Company.

7184

x Q. 98. Do you remember the suit against the Texas Siftings Company? A. I remember that there is a record of such a suit.

x Q. 99. And is that all you remember about it? A. No. I have a very distinct recollection that the suit started by G. & C. Merriam Company at that time was rather expensive for a number of publishers who had a right to do what they were doing, and the Courts so decided.

x Q. 100. Did the Court so decide in the Texas Siftings case that the defendant had a right to do what it was doing? A. The Court decided in the Texas Siftings case, if my memory serves me correctly, that the publishers—the Court did not decide that the publishers had done anything which they were not entitled to do, but did decide that Texas Siftings had made statements which were not within their rights; but none of the odium cast on Texas Siftings was shifted by the Courts to any of the publishers who were publishing Webster's dictionaries at that time. Now, that is from memory, and I think it is correct.

7186

x Q. 101. Are you willing to say now whether you published the book that was involved in that litigation? A. If you will produce the book—I will tell you whether I published it.

x Q. 102. Did you supply Texas Siftings with copies of the Webster's dictionary published by you at that time? A. I did.

7187

x Q. 103. Are you the Ogilvie referred to by the Circuit Court of Appeals in Boston in the following language:

“The Ogilvie circulars and advertisements are misleading and deceptive and show an intention on the part of Ogilvie to trespass upon the reputation of the Merriam Company and to deceive purchasers into buying his dictionary for one of the series of Webster's dictionaries published by the Merriam Company. The purpose of Ogilvie was to put out such a publication and such circulars and advertisements as would lead the public into the supposition that they were buying the Webster's dictionary as improved and added to by the Merriam Publishing Company. He purposely used words of description calculated to

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George W. Ogilvie—Cross.

lead the ordinary purchaser to suppose that he was getting the publication which had been built by the Merriams." Are you that Ogilvie? A. If your client is the same one to which the Court in the same decision referred, when they said that you had illegally interfered with my business, I am that Ogilvie.

7190

x Q. 103. Are you that Ogilvie without any ifs, ands or buts? A. As I don't smoke I am not a picker up of butts.

x Q. 104. Are you that Ogilvie? A. You have got my answer.

7191

x Q. 105. In estimating the extent and value of advertising of Webster's dictionaries not published by the Merriams, did you include the advertising matter thus described by the Circuit Court of Appeals in Boston? A. I am not a Yankee, but I would like to answer your question by asking another—do you think so?

x Q. 106. Do you know what you included in your estimate? Did you include that advertising?

MR. CARROLL: I object to that question as—

A. I am just framing a reply to that, Mr. Carroll—

7192

MR. CARROLL: (continuing) as purely hypothetical, and on the ground that this witness cannot tell what advertising was referred to or what particular circular the Court had in mind when it made those statements.

A. (No answer).

x Q. 107. I am waiting for an answer. Please answer the question. A. You cannot drive me in—

to answering questions before I get ready to answer. Just read that question again.

x Q. 108. (Question repeated as follows:) Do you know what you included in your estimate? Did you include that advertising? A. That advertising comprised about one inch of matter that was inserted in a circular after your partner had been to Chicago and tried to bribe my editors to steal editorial copy of my book.

MR. HALES The question of the witness is objected to as incompetent, irrelevant, immaterial and scandalous,—impertinent and scandalous.

THE WITNESS: But true.

MR. HALE: A motion is made to strike it out.

THE WITNESS: And it being only about one inch in a ten-inch circular, it was circulated for a limited time and discontinued immediately upon its being drawn to my attention, and before the Court had any opportunity to pass upon it, when it was being circulated. It is not included in the estimate.

x Q. 109. Please quote the language to which you refer as having been comprised within one inch? A. Have you the circular?

x Q. 110. I don't know to what circular you refer? A. Yes, you do.

x Q. 111. All of your advertising in that suit was enjoined? A. It was not, and you know it.

x Q. 112. Did you include in that estimate the advertising issued under the name of Saalfeld in connection with the dictionaries copyrighted by you? A. In what estimate?

7197

George W. Ogilvie—Cross.

x Q. 113. The estimate of the amount spent for advertising by publishers other than the Merriams? A. I did not.

x Q. 114. You included none of the Saalfield advertising? A. I don't believe I could give—just half a minute. Will you read that question again. I thought you referred to the amount of money I had expended.

7198

x Q. 115. (Question repeated as follows). Did you include in that estimate the advertising issued under the name of Saalfield, in connection with the dictionaries copyrighted by you? A. No, I did not.

x Q. 116. Why not? A. Because I had in mind newspaper advertising and not circulars.

7199

x Q. 117. Are you aware of the fact that the Circuit Court of Appeals in the Sixth Circuit, sitting at Cincinnati, has directed an injunction against the Saalfield advertising of your dictionaries? A. Have you a copy of the decision of the Court with you? Then I will be able to answer the question.

x Q. 118. I asked you if you are aware of that fact? A. Possibly I don't understand your question. If you will kindly repeat it or have it read I may be able to answer it.

7200

x Q. 119. Have you any knowledge or information as to whether or not the Circuit Court of Appeals of the Sixth District, sitting at Cincinnati, has directed an injunction against the advertising matter issued by Saalfield in the advertisement and sale of the dictionaries copyrighted by you? A. Do you refer to the suit that was started against Saalfield by you, representing the Merriam Company, in which you claim the right to the use of the word "Webster" after injunc-

George W. Ogilvie—Cross.

7201

tion restraining them from that right. Is that the suit you refer to—yes, there is such an injunction.

x Q. 120. Did that have anything to do with your estimate of the advertising matter of the amount spent by other publishers? A. It did not.

x Q. 121. Did you include in your estimate of that amount the fraudulent advertising enjoined by Judge Shipman in the Texas Siftings case? A. Mr. Hale, your question is an insult, and you intend to imply in that question that I had something to do with the advertising enjoined by Judge Shipman in the Texas Siftings case, and you know perfectly well that nobody had anything to do with it connected with Ogilvie, and you want to be damn careful about how far you go. If you ask me proper questions you will get proper answers, but I don't want you to get over the line, or I will.

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x Q. 122. (Question repeated). Did you include in your estimate of that amount the fraudulent advertising enjoined by Judge Shipman in the Texas Siftings case?

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MR. CARROLL: I object to the form of the question as calling for a conclusion of the witness and as being couched in improper and unfounded language, and assuming a state of facts not proven to exist, and on the further ground that it has not been shown that this witness had any knowledge or information about any advertising in connection with the Texas Siftings case.

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A. Do you want an answer to that question different from the one which I gave you before.

x Q. 123. Please answer the question? A. I had

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George W. Ogilvie—Cross.

not in mind the Texas Siftings matter at all when I made my estimate. I think the amount could be increased if it were included.

x Q. 124. Do you still own the copyrights of the dictionaries published under the name of "Webster" of the Saalfeld Company? A. The record in Washington will show that better than any information I can give you.

7206

x Q. 125. You know what you own and what you don't own. Do you own those copyrights? A. I cannot see that that has anything to do with this particular case, and I refuse to answer.

x Q. 126. It is not necessary for you to see whether it has anything to do with this case? A. It will be necessary for me to see before I can give you any information about what I own and what I don't own individually.

x Q. 127. Do you refuse to answer the question? A. You have my answer.

7207

MR. HALE: The answer of the witness is objected to and motion is made to strike it out, and the Special Examiner is requested to certify this question to the Court for a ruling as to the propriety of the question and the duty of the witness to answer it.

7208

x Q. 128. What is the general nature of the arrangement between you and Saalfeld for the publication of the dictionaries copyrighted by you?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, and not within the issues of this case, and not proper cross examination, and obviously at-

tempting to pry into the relations of this witness with a party not in any way connected with this suit, the matter having in no way having been touched upon on direct examination.

MR. HALE: The question goes directly to the interest and bias of the witness. He has been called to give expert and opinion evidence, and has done so at large. It appears that this witness is himself publishing a dictionary under the name of Webster.

7210

MR. CARROLL: I object to that statement on the ground that it does not so appear in the record anywhere, and on the further ground that he is not doing any such thing.

MR. HALE: It appears that this witness is or has been recently publishing a dictionary under the name of "Webster" which has been involved in litigation and in which injunctions have been granted and directed.

7211

x Q. 129. An answer is insisted upon? A. I refuse to answer. It seems to get under your skin what that contract is.

MR. CARROLL: Mr. Ogilvie don't say anything more, please. Don't let Mr. Hale excite you.

THE WITNESS: No, he hasn't got me excited for a minute. He simply doesn't like the truth.

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x Q. 130. Did you prepare or have anything to do with any of the advertising matter issued by Saalfeld?

7213

George W. Ogilvie—Cross.

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

A. I have had nothing to do with Webster's dictionaries, in over four years, in the matter of their sale, exploitation, advertising, or the preparation of anything in connection with them or anything else.

7214

x Q. 131. Did you prepare any part of the advertising matter issued by Saalfeld? A. My answer covers that question.

x Q. 132. The question may be answered yes or no. Will you please answer it that way? A. I will not.

x Q. 133. Why not? A. Because I will answer it in my own way, and I won't have you put words in my mouth answering your questions.

7215

x Q. 134. Will an answer either yes or no be true?

MR. CARROLL: Objected to as having been already fully answered by this witness, and being a mere repetition of the previous question.

A. I have already answered your question.

x Q. 135. Did you organize a concern called the United Dictionary Company some several years ago?

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MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

MR. HALE: Counsel is reminded that this is cross examination, and that the cross examining counsel is entitled to fully show the position of this witness in the controversy as to Webster's dictionaries, and par-

George W. Ogilvie—Cross.

7217

ticularly his animus toward the complainant in this suit.

MR. CARROLL: I object particularly to any characterization as that made by counsel for the complainant.

THE WITNESS: What makes you think I have?

MR. CARROLL: Mr. Ogilvie, please don't make any comments.

THE WITNESS: I would like to get his answer.

7218

MR. HALE: Take down what he says, please. I want to get every word that drops from the witness' lips.

x Q. 136. I am still waiting for an answer to my last question. Will you please answer it? A. Just repeat the question again.

x Q. 137. (Question repeated) Did you organize a concern called the United Dictionary Company several years ago? A. No, I did not.

7219

x Q. 138. Were you a stockholder in such a concern? A. I was.

x Q. 139. The principal stockholder, were you not? A. No.

x Q. 140. Who was, if not you?

MR. CARROLL: I object to that absolutely, as even outside the wide limit which Mr. Hale has laid down for himself, and obviously going into matter which in no way relates to this suit.

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MR. HALE: Attention is called to the delay of the witness in answering questions.

A. I have answered your question.

x Q. 141. (The last question is repeated as fol-

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George W. Ogilvie—Cross.

lows:) Who was, if not you? A. The last question was answered.

MR. HALE: Read the last question.

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x Q. 142. (Question repeated as follows:) who was, if not you? A. The question was answered by an objection on Mr. Carroll's part, and I assumed that that was sufficient. If that is not sufficient, I will answer the question. If you wish to ascertain, you will have to go and find the people and ask them. I won't tell you.

x Q. 143. Did that concern have a litigation with the Merriam Company in regard to the publication of a dictionary by it? A. No; the Merriam Company had a litigation with that concern. That concern did not have a litigation with the Merriam Company.

7223

x Q. 144. And the Merriam Company obtained an injunction against the publication of Webster's dictionary offered by that concern? A. The Merriam Company in the first case lost and in the second case won. The opinion of the Circuit Court of Appeals was affirmed by the United States Supreme Court in which—it is the belief of myself and many other people—they departed from the law,—even if it is the Supreme Court. The dictionary in litigation at that time was published without a copyright notice, with the knowledge and consent and under the contract with the G. & C. Merriam Company and you yourself told me that had you been advising the Merriam Company you would not have advised them to publish the dictionary in that form.

7224

x Q. 145. You imported a copy of that dictionary from abroad, didn't you, and proceeded to

photograph it for publication in this country? A. I did not.

x Q. 146. What did you do in that regard?

MR. CARROLL: I object again as utterly completely irrelevant and immaterial, and direct the witness if he chooses to refuse to answer any further questions along this line.

7226

A. Oh, yes. You might go into my great-grandfather's family if you go on, and I don't know much about that.

x Q. 147. You took an active part in that litigation? A. Not the sort of activity you have taken in this. I don't know what you call active.

x Q. 148. You appeared in your own proper person in the Circuit Court in that case, didn't you? A. No, I was not permitted to appear in my own proper person.

7227

x Q. 149. You applied, however, for leave, did you not? A. I did.

x Q. 150. And addressed the Court? A. I attempted to, but you objected to it. You didn't want the truth to be told there any more than you do in other places.

x Q. 151. What part have you taken in the defense of the suit against the Syndicate Publishing Company? A. I think the record will show what part I have taken.

7228

x Q. 152. Are you in any way connected with the Syndicate Publishing Company? A. What do you mean by connected?

x Q. 153. What are the relations between you and the Syndicate Publishing Company?

MR. CARROLL: Please answer.

7229

George W. Ogilvie—Cross.

MR. HALE: Keep still, Mr. Carroll, please. Don't interfere with my cross examination of the witness.

THE WITNESS: He means if I am connected in a friendly way?

MR. CARROLL: Answer the question, Mr. Ogilvie.

7230

MR. HALE: Take down what Carroll says and take down what I say, please.

MR. CARROLL: Surely.

A. Now, I am not sparring with you. I want to know what you mean by what is my connection with the Syndicate Publishing Company, and I will answer it in just a minute.

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MR. CARROLL: Unfortunately, my poor clients have to pay for this record, and I ask you not to make any superfluous statements.

MR. HALE: Please repeat the last question. If you are going to talk to the witness, it has got to go on the record.

THE WITNESS: Repeat that question, please.

x Q. 154. (Repeated as follows). What are the relations between you and the Syndicate Publishing Company? A. Very friendly.

7232

x Q. 155. Is that all you can say upon that subject? A. That is the only relation there is.

x Q. 156. You have no business relation with them whatever? A. No.

x Q. 157. Have you ever had? A. Never.

x Q. 158. Your interest in this suit, then, is wholly voluntary on your part? A. What do you mean by voluntary?

x Q. 159. Have you been paid anything for any-

George W. Ogilvie—Cross.

7233

thing you have done in connection with this suit?

A. No, sir.

x Q. 160. Do you expect to be? A. I do not.

x Q. 161. Did you call upon and interview persons who had made affidavits for complainant in this suit? A. Believing them to have been misled, I did.

x Q. 162. How did you come to do that? A. Because I am familiar with your tactics.

7234

x Q. 163. Did you first go and see someone connected with the Syndicate Publishing Company before doing that? A. I did.

x Q. 164. How much time did you spend interviewing these affiants? A. I cannot say, but all that was necessary.

x Q. 165. About how many days did you engage in that line of endeavor? A. I cannot answer that question. I don't know.

x Q. 166. And you received no compensation of any sort from the Syndicate Publishing Company, for that labor upon your part? A. It was a labor of love.

7235

x Q. 167. And do you regard your testimony here to-day in the same light? A. So far as compensation is concerned, I certainly do.

x Q. 168. Did you personally go to Washington to investigate the records of the copyright office along the lines of your direct testimony? A. That is unnecessary, and I did not. Anyone can get the information they require by communicating with the Copyright Office. The law prescribes a method.

7236

x Q. 169. You did not go to Washington then? A. I did not. A method is prescribed by statute for getting any information required from that office.

7237

George W. Ogilvie—Cross.

x Q. 170. You did not personally see, then, the books referred to upon the library cards produced from the Copyright Office? A. No.

x Q. 171. Have you any relations of any sort with Cupples & Leon Company? A. None.

7238 x Q. 172. You understand the word "relations," now, then? A. I understand a few things that would just as well not go on the record about your attitude and questions, and I am endeavoring to be very broad.

MR. CARROLL: Again I request the witness not to volunteer statements.

x Q. 173. Have you attended any of the sessions before the Examiners where witnesses were examined on behalf of defendants in this case besides this one? A. No.

7239 x Q. 174. You have forgotten, then, attending—
A. Not to the best of my recollection, if I understand what you mean again.

x Q. 175. You have forgotten, then, that you were present in the office of the Syndicate Publishing Company when the witness Donahue was examined? A. Well, I assumed that you were talking about examinations under the gentleman who was just in here to swear me. I know that there have been such examinations, and I thought
7240 you referred to them.

x Q. 176. And you have been present at them? A. I have not been present at them. I was present in the office of the Syndicate Publishing Company when Donahue was examined.

x Q. 177. In this suit? A. In this suit.

x Q. 178. Was that also in the line of your labors of love? A. Yes, or any other line that you wish to figure it out. It was without compensa-

George W. Ogilvie—Cross.

7241

tion, and merely an attempt to see that justice was done, so far as I am able to help anyone to secure it.

x Q. 179. Do you regard yourself as a disinterested witness in this case? A. Absolutely, without qualifications.

x Q. 180. Wholly unbiased? A. Absolutely.

x Q. 181. And no interest in the result? A. None whatever, of any nature in the world, except to see that justice is done. 7242

x Q. 182. And have you made up your mind as to what result would be justice in your view of the case?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

A. Well, that is a pretty broad question. I think I can answer it better after I have read all the testimony on both sides. 7243

x Q. 183. I presume you think justice was done in the Supreme Court case involving the dictionary of the United Dictionary Company?

MR. CARROLL: I object to that question as containing an unfounded presumption.

A. I don't think anything at all about it.

x Q. 184. Do you mean to say that you know?

A. I said that I don't think anything at all about it. Now, you cannot twist my words into some meaning other than that which I give them. 7244

x Q. 185. Was justice done by the Circuit Court of Appeals of the First Circuit at Boston?

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

7245

George W. Ogilvie—Cross.

x Q. 186. (Continuing). In your view? A. The Circuit Court of Appeals of the First District in Boston in rendering its opinion, stated as facts some things which were not true, on which there was no evidence whatever, and was purely, in my belief, a misconception of the evidence that had been presented to them.

7246

x Q. 187. You think, then, there was a failure of justice in that suit? A. I think there was a misapprehension of some of the facts and a decision rendered which was honest and which was of so little importance as applied to my welfare, that I didn't appeal from it, and have never appealed from it. You have done all the appealing in that and every other case in which I have been interested.

7247

x Q. 188. Were you content, then, to plead guilty to the finding that you were guilty of unfair competition and intentionally so?

MR. CARROLL: I object again to the form of this question as improper, and the question itself as irrelevant and immaterial.

MR. HALE: The mildest and politest language that counsel knew of was used in the question.

7248

MR. CARROLL: Furthermore, on the ground that counsel for defendant has never heard of anyone pleading guilty in a civil suit.

A. That is just exactly what I was going to say. Shall I answer the question? We both seem to be willing to plead guilty. You had an injunction entered against you and I had one against myself, and although you appealed and appealed and appealed, you were still found guilty.

x Q. 189. Among those library cards, produced from the Copyright Office, I notice the name of Ivison, Blakeman, Taylor & Company. When you produced these cards, did you know whether or not that concern was a licensee and published a Merriams dictionary under an arrangement with the Merriams? A. I would have to see the contract to know anything about their arrangement. I was never a member of the firm of G. & C. Merriam, G. & C. Merriam & Company, or Ivison, Blakeman, Taylor & Company.

7250

x Q. 190. Did you know, as a matter of fact that the book which Ivison, Blakeman, Taylor & Company published under the name of Webster's Handy Dictionary was a book belonging to the Merriam Company? A. I have never seen the book; therefore know nothing about it.

x Q. 191. I notice upon these cards the names of the following publishers, and the following dates, among others:

7251

Lippincott & Company, 1856; Harper & Brothers, 1853; F. J. Huntington & Company, 1840; White & Sheffield, 1839; Mason Brothers, 1857. Have you any knowledge or information as to the fact that the Merriams purchased the book published by those concerns at an early date?

MR. CARROLL: Objected to as assuming a state of facts not proven.

MR. HALE: Well, I will respond to that. The contracts for the purchase of these books have been offered in evidence and are in the record.

7252

A. Do I understand by that question that you had meant that publishers other than Merriams published Webster's dictionaries at that time?

7253

George W. Ogilvie—Cross.

x Q. 192. I ask that the question be repeated. Please answer the question asked. (Question repeated) I notice upon these cards the names of the following publishers, and the following dates, among others:

Lippincott & Company, 1856; Harper & Brothers, 1853; F. J. Huntington & Company, 1840; White & Sheffield, 1839; Mason Brothers, 1857.

7254

Have you any knowledge or information as to the fact that the Merriams purchased the book published by those concerns at an early date? A. I have never seen such contracts.

x Q. 193. Have you ever heard of them? A. Never heard of them.

x Q. 194. Have you forgotten that these contracts were offered in evidence in the case between you and the Merriam Company in the first Circuit? A. I have forgotten a great many things about that. I tried to forget it.

7255

x Q. 195. You have forgotten that fact, then? A. I don't remember having heard of such a contract.

x Q. 196. Do you remember having brought forward these same books published by other publishers at that early day in advance of that suit A. I don't. There were some books brought forward, but whether they were these, I don't know.

7256

x Q. 197. Were not substantially all the Webster's dictionaries of which you have given a list also enumerated in that suit by witnesses for the defendant? A. Until very recently my impression was that the first Webster's dictionary published by anyone other than your clients or some people with whom they were associated, was in 1850; so I could not possibly have reference to the books that were published prior to that date.

x Q. 198. I am referring now to the long list of some sixty-seven or some sixty-nine— A. So am I. We are referring to the same thing.

x Q. 199. Were not the majority of those dictionaries mentioned by witnesses for the defendant in your suit with the Merriam Company? A. I am not certain whether a majority of them were mentioned. Certainly some of them were.

x Q. 200. Under how many names has your book "Webster's Imperial Dictionary" been published? A. I think the book is the best evidence of that fact. 7258

x Q. 201. It has been published under each of the following names, has it not: Webster's Imperial Dictionary, Webster's Universal Dictionary, Webster's New Cosmopolitan Dictionary, Webster's Monarch Dictionary, Clarkson's Dictionary? A. You haven't given the whole list. There are some things even you don't know about that. 7259

x Q. 202. It has, however, been published under the names mentioned? A. I have seen copies of the books published under some of those titles, but not all of them.

x Q. 203. What is your best knowledge, information and belief as to whether it has been published under all of them? A. The books are the best evidence.

x Q. 204. What is your best knowledge, information and belief on that subject? A. I repeat, the books are the best evidence. 7260

x Q. 205. Question repeated? A. Answer the same.

x Q. 206. What other names do you believe that book has been published under? A. The books are the best evidence.

7261

George W. Ogilvie—Cross.

x Q. 207. What other names, please? A. Same answer.

x Q. 208. I cannot find the books, without the names. Please give the names? A. You know enough. The same answer.

x Q. 209. Is that the only answer you will make? That is the only one.

7262

x Q. 210. How many other names? A. The books are the best evidence.

x Q. 211. Is that the only answer you will make? A. That is the correct answer.

x Q. 212. Then you won't assist the Court in arriving at the truth by giving such information as you can?

7263

MR. CARROLL: I object to all this line of testimony as obviously irrelevant and immaterial. The witness has given in his direct testimony two names under which the book appeared. That is sufficient for the record. It is obviously immaterial whether it has been published under other names or not.

x Q. 213. Please answer the question? A. I have answered it.

x Q. 214. When did you say the name "Webster" was first used on the Hurst book? A. I didn't say.

7264

x Q. 215. When was it? A. I don't know.

x Q. 216. Do you know whether or not the Hurst book was previously published under a name of which Webster did not form a part? A. I do not.

x Q. 217. Did you ever have any knowledge or information on that subject? A. If I had, it has escaped my memory.

x Q. 218. To refresh your memory—— A. I have been attending pretty closely to my own business instead of other people's within the last four years.

x Q. 219. Barring of course the Syndicate Publishing Company's business? A. Always barring the business of any men or concern that are unjustly assailed, if I can do a service.

x Q. 220. Do you regard the Syndicate Publishing Company as unjustly assailed in this suit? A. In view of the correspondence of your client with them, and extending for some years prior to the time this suit was instituted, I certainly do. 7266

x Q. 221. You disagree with Judge Cox, then, that the complainant ought to have an injunction in this suit? A. I am not disagreeing with anybody—not even with you.

x Q. 222. Going back to the "Hurst" dictionary—do you not know that that book was published and copyrighted in the year 1878, the copyright title being No. 10,558, and the registry title being as follows: "Hurst American Illustrated Pronouncing Pocket Dictionary of the English language, based on the labors and principles of the latest and best American and English authorities."? A. If that is true, the book is the best evidence of the fact. Are you calling for a conclusion or— 7267

x Q. 223. You don't know that fact? A. If I knew it, I have forgotten it. 7268

x Q. 224. Is your memory now refreshed? A. No; I don't remember it at all.

x Q. 225. Yes, that was testified to in the suit between you and the Merriams in the First Circuit?

7269

George W. Ogilvie—Cross.

MR. CARROLL: Testified by whom?

MR. HALE: By the witness Allen.

A. Oh, your Allen. You refer to the witness from the F. & G. Merriam Company.

x Q. 226. I do. A. He might have testified to almost anything. He had testified to a great many things of which I am not familiar.

7270

x Q. 227. That does not refresh your recollection? A. Not at all. I disregarded Mr. Allen's testimony. I thought it was wholly useless anyway, and the Court so concluded.

7271

x Q. 228. I will further refresh your recollection by stating to you that that same book was copyrighted, as appears by the records of the Copyright Office under the following name: Date, 1873, the American Diamond Pronouncing Dictionary of the English language. Date, 1879, The Unique Pronouncing Dictionary of the English Language. Date, 1879, the American Popular Dictionary. 1880, Hurst's American Illustrated Pronouncing & c. Dictionary; 1882 The Favorite Pictorial Defining and Pronouncing Dictionary, Date, 1882, the New American Dictionary of the English Language. Date, 1882, The American Comprehensive Lexicon of the English Language.

7272

MR. CARROLL: I object to this question and protest against any such list being given here, as no proof having been introduced anywhere in the record as to any such books or any such copyrights and there being no assurance in any way that these books are not invented for the occasion.

MR. HALE: I will respond to that. The records of the Copyright Office are easily

George W. Ogilvie—Cross.

7273

produced, and there is no question of invention. Complainant cannot introduce evidence while defendant is taking proofs; and it is strictly proper to call the attention of the witness on cross examination to such matters.

x Q. 229. (Continuing) Also, 1880, The Handy Reliable Dictionary of the English Language. Do you have any information as to whether or not the book referred to by the Hurst book was or was not published at those dates under the names specified?

7274

MR. CARROLL: Objection resumed, and on the further ground that it is irrelevant and immaterial.

A. They may or may not have been. The practice of changing titles for the same book is one that has been indulged in by many publishers including G. & C. Merriam Company, as applied to a dictionary of the English language. You have reference to Webster's school and office dictionaries. If you have known of that, take any other name of which the name "Webster" did not form a part. I was not its publisher.

7275

x Q. 230. I didn't ask you that. I asked you if you ever knew of that book under any other name, of which Webster did not form a part? A. If I did, I have forgotten it. I have not attempted to keep track of any of these changes in titles or the books involved in the litigation. You cannot get me to make any definite statement in regard to it, unless I have the books right before me to refer to.

7276

x Q. 231. But, to refresh your recollection, I

7277

George W. Ogilvie—Cross.

ask you if you don't know that the book which you have called Webster's School and Office Dictionary had been previously published under the name of Balch's Compendium? A. Same answer.

x Q. 232. Did you know that fact? A. Same answer.

x Q. 233. Did you know that fact? A. Same answer.

7278

x Q. 234. I suppose you will make the same answer to similar questions in regard to other books? A. Exactly. If you will produce the books, I will be very glad to answer that, but I am not going to depend upon my memory when I am under oath, except where I do actually remember things.

7279

x Q. 235. You have mentioned Saalfeld and Ogilvie as being among publishers of dictionaries using the name Webster which were not published by Merriam. Saalfeld now publishes the books previously published by you, does he not? A. The ones which the Court has determined to be in conformity with the law, he publishes now.

MR. HALE: The answer is objected to as not responsive.

THE WITNESS: It is responsive, because he does not publish all of the Webster's dictionaries that I formerly published. It is an accurate answer.

7280

x Q. 236. Which ones does he not publish? A. Hill's Vest Pocket Webster.

x Q. 237. Who publishes that now? A. I have already stated, and will again—David McKay.

x Q. 238. What other dictionary formerly published by you is now published by Saalfeld? A. That is the only one.

x Q. 239. Among the other abridged dictionaries which you have mentioned in your list, are they all reprints of the 1847 edition, except your own Webster's Imperial Dictionary, and the same book under other names? A. Yes.

x Q. 240. You mentioned the Hampden Publishing Company. Did you know or hear that they had been enjoined and submitted to an injunction? A. I heard that they had refused to spend any money to defend the suit that was brought against them, and in the phraseology of the individual who told me, "laid down."

7282

x Q. 241. Can you fix the date of the first use of the name "Webster" upon each and every one of the dictionaries enumerated in the list? A. I cannot.

x Q. 242. You can, however, of your own? A. Approximately—that is, those that I published first; those that were first published by me.

7283

x Q. 243. At whose request did you get this list of books from the Copyright Office at Washington? A. No one requested me to do it.

x Q. 244. You volunteered it? A. I didn't have anyone ask me to do it.

x Q. 245. Did you procure it and bring it to the defendants or its counsel?

MR. CARROLL: I object to that as irrelevant and immaterial.

7284

A. It is procurable; any one can procure it that wants to by sending for it.

x Q. 246. Did you procure the information and the list and bring it to defendant and its counsel?

A. Didn't you see me hand it to the counsel this morning?

x Q. 247. And you did it wholly on your own

7285

George W. Ogilvie—Cross.

motion and without request from anyone? A. Certainly. He didn't ask me for it. I handed it to him. You saw me do it.

x Q. 248. I believe you stated that you had spent something like one hundred thousand dollars in advertising your dictionaries under the name of "Webster;" is that correct? A. I stated it to be correct, and I did. It is correct.

7286

x Q. 249. Did you so state it? A. I certainly did. Your memory serves you correctly—approximately.

x Q. 250. During what period was that approximate amount spent?

MR. CARROLL: Objected to as having been already answered by the witness.

MR. HALE: When, on direct or cross?

MR. CARROLL: On direct. I asked him that in the very first place.

7287

MR. HALE: I will respond to that. That is no reason why it should not again be asked upon cross.

A. 1903 to 1908.

x Q. 251. Have you spent anything for advertising Webster's dictionary since 1908? A. Not a penny.

7288

x Q. 252. You stated you paid Everybody's Magazine \$1,500 on one occasion. When was that? A. That was prior to 1908—at the time the Lawson articles were running. I had two pages in one issue.

x Q. 253. What book was advertised in that issue? A. Webster's Imperial Dictionary.

x Q. 254. Are you a partner or a stockholder in any concern which is publishing or selling a

thin paper edition of Webster's Universal Dictionary? A. I am not.

x Q. 255. Are you in any manner financially interested in the publication and sale of a thin paper edition of Webster's Universal dictionary?

A. I refuse to answer that question. I cannot see that it has any bearing. It is a private matter. If I am, I am not giving my personal affairs to the public, to you, or any other individual.

7290

x Q. 256. The question is a proper question and does not pry into your personal affairs. I am asking you, are you interested in any manner in such a concern?

MR. CARROLL: The question is objected to as irrelevant and immaterial. The witness has already refused to answer it.

A. (No answer.)

x Q. 257. I am waiting for an answer to the last question? A. You had an answer some time ago. 7291

x Q. 258. Please repeat it? A. Same answer.

x Q. 259. Which is, that you refuse to answer? A. I have not refused to answer. I have answered your question in my own way.

x Q. 260. Are you or are you not interested in a thin paper edition of Webster's Universal dictionary? A. I think it is a very fine book. I am interested in all books.

x Q. 261. Are you financially interested in that work? 7292

MR. CARROLL: Objected to on the same grounds, and protest is made against filling the record with repetitions of questions which counsel for complainant knows are irrelevant and immaterial.

7293

George W. Ogilvie—Cross.

MR. HALE: I will respond to that. The repetition of the question is necessitated by the refusal of the witness to answer plain and simple questions which are obviously relevant, and by his evasive and argumentative replies. Read the last question, please.

7294

x Q. 262. (Question repeated as follows). Are you financially interested in that work?

MR. CARROLL: There is a question on the record but the witness refuses to answer it. That ends it.

7295

MR. HALE: The refusal of the witness to answer is excepted to, and the Special Commissioner is requested to certify the question to the Court for a ruling as to its propriety, and the duty of the witness to answer it.

x Q. 263. Do you know the names of any concerns, handling a thin paper edition of Webster's Universal Dictionary? A. No.

x Q. 264. Did you ever hear of the Riverside Publishing Company of Chicago? A. Yes.

x Q. 265. Do you know whether or not they are handling a thin paper edition? A. They are, to the best of my knowledge.

7296

x Q. 266. Do you know of any other concern handling a thin paper edition of that work? A. I do not.

x Q. 267. Never heard of it? A. Never heard of it.

x Q. 268. Never saw any advertisement of any other concern? A. Never; and the reason I an-

George W. Ogilvie—Cross.

7297

swered no to the question about concerns was because you made it plural instead of singular.

x Q. 269. Have you any knowledge or information as to whether or not the Riverside Publishing Company is the exclusive publisher or distributor of that work? A. That is a contract, I should say, between the publisher and the individual who is disposing of it, and I have never seen any such contract.

7298

x Q. 270. Have you any knowledge or information upon that subject of any sort? A. I think the contract would be the best evidence in that respect, and I have never seen any such contract, if there is one, covering that point; and I am not going to jump at a conclusion about what some people have done fifteen hundred or two thousand miles away from me.

x Q. 271. I asked you what knowledge or information you had?

7299

MR. CARROLL: Objected to as irrelevant and immaterial.

A. I am under oath, and I cannot say.

x Q. 272. Have you any knowledge or information upon that subject? A. You have my answer.

x Q. 273. Have you any knowledge or information upon that subject?

MR. CARROLL: This question is again objected to as irrelevant and immaterial, and on the ground that it has already been fully answered.

7300

MR. HALE: The special Examiner is requested to certify this question to the Court for a ruling as to its propriety and the duty of the witness to answer it. When the wit-

7301

George W. Ogilvie—Cross.

ness has answered the question which the Examiner has been requested to certify to the Court, the complainant will be able to continue the cross examination. He is not able to do so so long as the questions asked remain unanswered.

7302

MR. CARROLL: The witness is tendered to counsel for complainant for completion of the cross examination at this point. Unless he complete it now his examination will be necessarily limited to the particular questions certified to the Court.

MR. HALE: The additional cross examination will be upon the questions certified, and all questions growing out of them. Counsel is unable to proceed further at this time unless this witness will answer the questions.

7303

MR. CARROLL: Counsel for complainant then has finished his cross examination except with respect to the questions which have been unanswered; is that correct?

MR. HALE: Except for these questions, and such cross examination as answers to these questions may lead to.

7304

Complainant hereby gives notice to counsel for both defendants that the depositions on behalf of complainant in rebuttal in both cases will be taken before a Special Examiner, John F. Jennings, at the office of G. C. Merriam Company at Springfield, Massachusetts, on the 9th day of July, at 11 o'clock in the forenoon of that day. Counsel are invited to attend and cross examine such witnesses as may be produced.

Offering of Dictionary Exhibits Pursuant to Stipulation. 7305

In order that you may close here, I will withdraw the request to the Examiner to certify the questions. I don't care whether he answers them or not.

DEPOSITION CLOSED.

Signature of witness waived by consent. 7306

Testimony of defendants in New York closed, except as stipulated.

NEW YORK, MONDAY, July 15th, 1912.

Met pursuant to stipulation and on consent.

Formal notice of meeting waived. 7307

Present: THE EXAMINER.

WILLIAM B. HALE, Esq.,
For Complainant.

LAUREN CARROLL, Esq.,
Of Counsel for Defendant Syndicate
Publishing Company and for De-
fendant Cupples & Leon Co. 7308

It is HEREBY stipulated that the following dictionaries with the name "Webster" in their titles published by Saelfield Publishing Company, Akron, Ohio, may be deemed in evidence and any copies may be produced, without being especially marked, at the final hearing and at any subsequent proceedings in this case:

7309 *Offering of Dictionary Exhibits Pursuant to Stipulation.*

Webster's Encyclopedic Dictionary
 Webster's Universal Dictionary
 Webster's Inter-Collegiate Dictionary
 Webster's Reliable Dictionary
 Webster's Adequate Dictionary, and also

any of the Webster's Dictionaries copyrighted between the dates 1806 and 1840 by Noah Webster.

7310

IT IS ALSO STIPULATED that the following books may be offered and received in evidence without being identified by any witness—

MR. HALE: But subject to all other objections on the ground of incompetency, irrelevancy and immateriality and any special objection that may be taken and reserved to any particular book.

(Continuing stipulation)

7311

Hill's Vest Pocket Webster's Dictionary, by Professor C. M. Stevens, Ph.D., published by George M. Hill Company, Chicago, copyright notice 1889 by George M. Hill Company, No. 1.

Wehman Brothers Latest Vest Pocket Webster's Dictionary, published by Wehman Brothers, New York; copyright notices 1893, 1894 and 1908, by E. E. Miles, No. 2.

7312

MR. HALE: I object to the book and form of the offer and description thereof, as incompetent, irrelevant and immaterial, and because there is no evidence of the facts recited by Counsel.

MR. CARROLL (continuing stipulation):

Peerless Webster Self-Pronouncing Dictionary, George W. Noble, Chicago; copy-

Offering of Dictionary Exhibits Pursuant to Stipulation. 7313

right notice 1899 by Plymouth Publishing Company, No. 3.

Excelsior Webster Pocket Speller and Definer, F. N. Payne, published by Excelsior Publishing House, McKeon & Schofield, proprietors, New York; copyright notice 1892, Excelsior Publishing House, No. 4.

7314

Webster's Pocket Dictionary and Speller, published by William Bulger, Chicago; copyright notice 1895 by William Bulger, No. 5.

Webster's Pronouncing Dictionary of the English Language, published by B. Tennyson Neely, Chicago and New York, No. 6.

Hurst's Webster's Dictionary, published by Hurst & Company, New York; copyright notices 1879 and 1882 by Hurst & Company, No. 7. 7315

A Concise Webster's Dictionary, edited by D. T. Steuart, M. A., published by A. L. Burt Company, New York; copyright notice 1895 by A. L. Burt, No. 8.

Webster's Library Dictionary for Home, School and Office, by Professor C. M. Stevens, Ph. D., published by M. A. Donohue & Company, Chicago; copyright notice 1911 by M. A. Donohue & Company, No. 9. 7316

Webster's American Standard Dictionary, published by Commonwealth Publishing Company, New York; copyright notice 1909 by Commonwealth Publishing Company, No. 10.

7317 *Offering of Dictionary Exhibits Pursuant to Stipulation.*

Webster's School and Office Dictionary, published by Thompson & Thomas, Chicago; copyright notices 1901, 1903 and 1905, all by Thompson & Thomas, No. 11.

7318 Webster's Universal Self Pronouncing Dictionary, Charles Morris, published by John C. Winston Company, Philadelphia and Chicago; copyright notices 1908 and 1911 by John C. Winston Company, No. 12.

7319 MR. HALE: The offer of the last book is especially objected to on the ground that the title has not been correctly stated by counsel, as will appear from inspection of the book, the title being as appears on the backbone of the cover and title page, "Universal Self Pronouncing Dictionary," the word "Webster" and the word "Morris" being printed merely upon the front cover of the binding—

MR. CARROLL: Also the statement appearing upon title page, "Based upon the solid foundation laid by Noah Webster."

7320 MR. HALE: The last remark is also objected to by counsel for complainant: that recital in the title page is no evidence of that fact as has been proved in this case, with special reference to defendants' own dictionary.

MR. CARROLL (continuing stipulation): Webster's Business and College Dictionary, revised and enlarged by Professor C. M. Stevens, Litt. D., published by W. B. Conkey Company, Chicago; copyright notice 1911 by W. B. Conkey Company, No. 13.

Offering of Dictionary Exhibits Pursuant to Stipulation. 7321

Webster's Modern Dictionary of the English Language for Home, School and Office, published by L. W. Walters Company, Chicago; copyright notice 1907, L. G. Stahl; and copyright notice 1908, J. H. Moss, No. 14.

Laird & Lee's Webster's Modern Dictionary, compiled by E. T. Roe, awarded gold medal and diploma Lewis & Clark Centennial Exposition, No. 15. 7322

MR. HALE: I object to counsel reading such statement into the record on the ground that it is incompetent, irrelevant and immaterial and, second, that the recital read from the book is no evidence of the facts recited.

MR. CARROLL: (continuing stipulation) —published by Laird & Lee, Chicago; copyright notices 1895, 1899, 1903, 1905, 1906, all by William H. Lee. 7323

Laird & Lee's Webster's New Standard Dictionary of the English Language, Elementary School Edition, published by Laird & Lee, Chicago; copyright notice 1907, William H. Lee, No. 16.

Laird & Lee's Webster's New Standard Dictionary of the English Language, School Edition, published by Laird & Lee, Chicago; copyright notices 1906 and 1907 by William H. Lee; also entered at Stationers' Hall, London, England, No. 17. 7324

Laird & Lee's Webster's New Standard Dictionary of the English Language, Common School Edition, awarded gold medals and diplomas at World's Expositions, No. 18.

7325 *Offering of Dictionary Exhibits Pursuant to Stipulation.*

MR. HALE: The statement of counsel as to medals and diplomas is objected to as incompetent, irrelevant and immaterial and not evidence of the facts recited, and as secondary.

7326 MR. CARROLL: (continuing stipulation)
—Published by Laird & Lee, Chicago; copyright notices 1903, 1904, 1905, 1907, 1908 and 1911 by William H. Lee; entered at Stationers' Hall, London, England; Déposé au Ministère de l'Intérieur et à la Bibliothèque Nationale, Paris, France.

Laird & Lee's Webster's New Standard Dictionary, Illustrated Library Edition, awarded gold medal leading World's Expositions, No. 19.

7327 MR. HALE: I make the same objection to counsel reading into the record advertising statements as though they were proof of the facts recited.

MR. CARROLL: (continuing stipulation)
—Published by Laird & Lee, Chicago; copyright notices 1903, 1904, 1905, 1907 and 1908 by William H. Lee; entered at Stationers' Hall, London, England, and Déposé au Ministère de l'Intérieur et à la Bibliothèque Nationale, Paris, France.

7328 Laird & Lee's Webster's New Standard American Dictionary, Encyclopedic Edition, published by Laird & Lee, Chicago; copyright notice 1911 by William H. Lee, No. 20.

Offering of Dictionary Exhibits Pursuant to Stipulation. 7329

Webster's Condensed Dictionary by Dorsey Gardner, with the following imprint—

Chicago

Reilly & Britton Company.

Springfield, Mass.; G. & C. Merriam Company.

1910,

copyright notices 1884, 1906 and 1909 by G. & C. Merriam Company. No. 21. 7330

IT IS STIPULATED that the 20th Century Edition of Webster's Pronouncing Dictionary may be deemed in evidence and produced at final hearing.

An American Dictionary of the English Language, Noah Webster, published by Harper Brothers, 1846, New York, bearing upon its back-bone the title "Webster's Dictionary" and bearing copyright notice 1829 by Noah Webster and Joseph E. Worcester; 1841 by Noah Webster. No. 22. 7331

MR. HALE: The complainant has no objection to the offer of the book last produced or to the Webster's Condensed Dictionary offered.

As to the remaining dictionaries, Complainant objects; first, that they are offered as independent books, whereas it appears from inspection that some of them, at least, are the same identical book having the same literary contents and the only difference being in the titles given to them; an illustration of which is the so-called Webster's Business and College Dictionary bearing the publisher's imprint, W. B. Conkey Company, and copyright notice 1911. So far as comparison at 7332

7333 *Offering of Dictionary Exhibits Pursuant to
Stipulation.*

7334 this session by Counsel could demonstrate, it is the same identical book as offered under name of Webster's Modern Dictionary of the English Language, 1910 Edition, with the imprint published by the L. W. Walters Company, Chicago, and bearing copyright notice dated 1907, L. G. Stahl, and 1908, by J. H. Moss. Attention is called to the fact that not only is the vocabulary identical but even the prefatory pages in it and the table of contents and the paging are identical.

7335 MR. CARROLL: I object to the statement by Counsel for Complainant that a number of books offered are identical, first on the ground of its indefiniteness and generality and on the further ground that the books themselves are the best evidence, and that Counsel for Complainant's statement is incompetent and no proof of the facts contained in such statement. Counsel for Complainant is requested to point out any other books among those offered which seem to him to be so nearly similar as to merit being called by him "identical."

7336 MR. HALE: So far as a hasty examination made at the counsel table disclosed, the two books referred to were absolutely identical, and the word "identical" and not "similar" is the proper descriptive adjective to apply to them.

7336 Another illustration of this same thing is the "Webster's New Standard Dictionary, Library Edition," and so-called "Webster's New Standard Dictionary, Common School Edition," which appear to have been printed from the same plates, so far as a hasty examination would disclose. There may be others but Counsel cannot point them out without further examination.

Offering of Dictionary Exhibits Pursuant to Stipulation. 7337

MR. CARROLL: Objection is made to the statement by Complainant's Counsel "there may be others."

MR. HALE: The books are in evidence and it will be pointed out in the brief and argument which are identical.

Further objection is here made that the reading of the various title pages, prefaces, etc., is not sufficient proof and that it is not evidence of the truth of the facts recited. 7338

It is further objected, that in all these dictionaries the certificates of copyrights referred to by the dates of the copyright notices have not been produced, thus showing with certainty the name under which the books were copyrighted at the time specified and it is objected to on the ground that there is no evidence that particular books bearing the name "Webster" and earlier copyright notice have always borne the name "Webster" at the time they were copyrighted or that the name appeared in the title at the time they were registered. Specific illustration of this is the so-called "Hurst's Webster's Dictionary," which bears copyright notices dated 1879 and 1882, as to which it will appear upon inspection of the records in the Copyright Office that the title registered at this date was "American Popular Dictionary," in which the name "Webster" did not appear, and there is no evidence as to the time when the name "Webster" was so added to this book. 7339 7340

MR. CARROLL: Objection is made to the last statement of Counsel for Complainant on the ground that it is incompetent and no proof at all of the alleged fact contained therein.

7341 *Offering of Dictionary Exhibits Pursuant to Stipulation.*

7342 MR. HALE: Another illustration of the objection and the objection is specifically pointed to the book offered in evidence as "Webster's School and Office Dictionary," bearing copyright notices Thompson & Thomas, 1901, 1903 and 1905, and the book offered bearing the publisher's imprint dated 1909. The title page, also bearing the statement "taken from authority of Noah Webster, revised and enlarged Edition." It is specifically objected to this book, that there is no evidence as to when the name "Webster" first appeared upon it, and it will appear by a book which Complainant will offer in evidence as part of its rebuttal testimony that this same identical book was previously published under a name in which "Webster" formed no part of the short title of "Balch's Compendium" or "Balch's Handbook," and reference is made to the copyright number 15857, which is stamped upon this book in the Copyright Office, the full copyright name being "The People's Dictionary and Everyday Encyclopedia comprising any information needed on any subject in daily use."

7343

7344 MR. CARROLL: Protest is made on the record against this attempted method of proof by Counsel, for Complainant. It is obviously incompetent and is further objected to as irrelevant and immaterial. The contents of a copyright certificate, etc., cannot be properly referred to by Counsel for Complainant without producing and offering the same in evidence.

MR. HALE: Complainant was merely pointing objection to the insufficiency of

Offering of Dictionary Exhibits Pursuant to 7345
Stipulation.

Defendants' proofs along this line and giving illustrations, all of which were references where the point of the objection might be verified.

MR. CARROLL: Subject to the objections noted, said Dictionary Exhibits are offered in evidence, received in evidence and marked respectively Nos. 1-22, together with the date and initials of the Examiner. 7346

Testimony on behalf of defendants in New York closed.

Printing of Standing Examiner's certificate is omitted by consent.

ADJOURNED. 7347

7348

1838

7349

DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

vs.

Equity
8-161.

7350

CUPPLES & LEON COMPANY,
Defendant.

G. & C. MERRIAM COMPANY,
Complainant,

vs.

Equity
8-162.

7351

SYNDICATE PUBLISHING COMPANY,
Defendant.

SPRINGFIELD, Mass.,

June 28, 1912.

2:30 o'clock P. M.

APPEARANCES:

7352

The Special Examiner,
JOHN F. JENNINGS.

WM. B. HALE, Esq.,
For Complainant.

LAUREN CARROLL, Esq.,
For both Defendants.

John W. Nolan—Direct.

7353

Depositions taken in behalf of Defendants for final hearing, pursuant to notice annexed, before John F. Jennings, Esq., a Special Examiner of this Court, pursuant to the 67th Rule in Equity, as amended, at the office of John F. Jennings, in the City of Springfield, Massachusetts, at 2:30 o'clock P. M.

It is hereby stipulated that the depositions of the witnesses to be called in Springfield shall be taken down stenographically by a skilful stenographer, to be selected by the Special Examiner, and subsequently transcribed and reduced to type-written form for the use of the Court.

7354

JOHN W. NOLAN, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

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DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Give your full name. A. John W. Nolan.

Q. 2. Age? A. 42.

Q. 3. Residence? A. 96 Franklin Street.

Q. 4. Springfield? A. Yes, sir.

Q. 5. Occupation? A. Circulation manager of the "Springfield Union."

Q. 6. How many years have you been Circulating Manager of the "Springfield Union?" A. Down for the last seven years—I have been in the Circulation Department nearly twenty years, full charge about the last six or seven, but I had nearly all the circulation to look after previous to that.

7356

Q. 7. Can you mention any plans or schemes that have been used by you during that period to

7357

John W. Nolan—Direct.

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increase the circulation of the "Springfield Union?" A. Yes, we have used several different schemes, some of them along the coupon line, whereby we advertised in the paper and stipulate that the subscriber in order to obtain the premium must get one or more coupons from the paper and pay whatever price is decided upon for the premium. We, of course, have used other schemes in connection with the house to house canvasses, trying to obtain new subscribers in that way. We have also used advertising in the paper to advertise certain premiums where we didn't use the coupon, but asked the subscribers to agree to take the paper for a certain length of time, usually from three to six months to a year. These are the three forms mostly used for obtaining circulation.

7359

Q. 7. Do you remember a particular scheme known as the "Dot" plan? A. Yes, I do.

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Q. 8. Will you describe that? A. That was one of our most popular contests. The plan was to put so many dots into a given space. For instance, we would use a space two columns wide and three to four inches deep, just fill that blank space with dots, then ask the reader to count the number of dots and send in their answer with a remittance for one month's subscription for each count they wished to submit. We received thousands on the "Dot" contest, thousands of subscribers, in fact I think it was one of our most popular contests that we ever ran.

Q. 9. Did some people take more than one chance? A. As a rule, most people took more than one chance. Of course, on their first count, they would usually run through it very rapidly, and on their second count, which showed a dif-

ference from their first they naturally would suppose their second or any succeeding counts they made were correct, and in order to be on the safe and sure side, would enclose 50 cents more to send in another survey. In some cases the subscribers would send in from six to a dozen and in one case there was one subscriber who sent in answers enough with remittances for each answer to cover a period of subscription for two years.

Q. 10. Whose idea was this plan? A. That was an outsider's idea. It was tried first on one or two small papers and we heard of the interest and excitement it created in that immediate locality and we immediately got in touch with its promoter and after talking matters over with him we took on the proposition.

Q. 11. Did he have it patented? A. Yes, he did.

Mr. Hays: Question and answer is objected to, as calling for the conclusion of the witness and because such a scheme cannot be patented.

Q. 12. You paid him specially for the idea? A. Yes, we paid him for the privilege of running it.

Q. 13. Was there any scheme known as the "Pony Contest"? A. Yes, there was a "Pony Contest". That was in a way an entirely different proposition, but another means to increase circulation. We offered two Shetland Ponies to the child receiving the most votes, as we call the "most popular" child. Of course, this interested every boy and girl, not only in Springfield, but in the surrounding territory, and their relatives and friends got out and interested, and made, of course, a very thorough canvass of this entire

7365

John W. Nolan—Direct.

district. Of course, a number of people were canvassed from one to a thousand times in favor of the different candidates. The plan of that was to allow so many votes for each paid-in-advance subscription that was turned in, number of votes varying from one month up to one year. The plan was unusually successful, attaining thereby a large number of new subscriptions and which were all paid for in advance.

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Q. 14. Whose idea was this "Pony Contest"?

A. That was an outsider's. They hired an outside man, who made Pony Contests his specialty among the newspapers of the country.

Q. 15. Did you also have a "Flag Scheme"?

A. We had a "Flag Scheme" which we used exclusively by advertising through the columns of the "Union."

7367

The terms of the "Flag Proposition" were that any person could obtain a flag by subscribing for the "Union," either the morning or evening edition, for a period of three months, paying in advance for the same, and also paying one dollar additional for this flag, which consisted of the pulley, rope, halyard, also a bracket in which to place the flag—in fact, the outfit was complete. That was a very successful proposition.

7368

Q. 16. Whose idea was that? A. That was really our idea. We could use the flag in a number of different ways, but I decided we would try it out that way. I might say in addition to that we used the flag as a premium among the boys who were selling papers, offering them a flag complete if they would bring in ten new subscribers, and that was equally successful. The boys got out and hustled, brought in their subscribers

John W. Nolan—Direct.

7369

and were very much pleased with the flag, thought it was a good thing to have and thought they got it pretty easy.

Q. 17. Did you use a phonograph proposition?

A. Yes, the phonograph was a very successful proposition. That was first used in the West. We heard of it from a man named Swift, I think. We made arrangements with him. He was in the premium business at that time—

7370

Q. 18. Was that the same Swift who is now connected with the Syndicate Publishing Company? A. I believe so. He is what we newspaper men call a "premium man." That was a very successful proposition; in fact, it was what we considered one of our best.

Q. 19. How did that work? A. That was worked mostly on a canvass. We used that different from some of the other schemes I have mentioned. It was used in connection with a house to house canvass. The subscriber would agree to take the paper for a specified time, paying therefor at the regular rate of 12 cents a week for the daily or 17 cents a week if they took the daily and Sunday, and we issued to them certificates, and they presented that certificate at the office of the Columbia Phonograph Company, and on payment of a certain sum, which was stated in the contract which they signed, the phonograph, with three records, was delivered to them, and that remained in their possession as long as they fulfilled the agreement between the "Union" and themselves by paying for their paper regularly and taking it for the required length of time.

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Q. 20. What is the big advantage to the newspaper derived from these schemes?

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John W. Nolan—Direct.

MR. HALE: Objected to as irrelevant and immaterial.

A. As a stimulus for circulation. We use everything along that line in order to get new subscribers, and of course after we obtain them we hope to keep them permanently on our list with the features which we use in our paper, both news and other features we may use.

7374

Q. 22. Do you consider these plans increase your prestige? A. I do; I do, very much. We received a number of compliments upon each and every one of these schemes; subscribers of course wonder how we can afford to do it. Of course, our whole idea is to get as many people who are readers of the "Union," regular readers of the "Union," to become regular subscribers.

7375

Q. 24. You also permit the old regular subscribers to come in on these schemes? A. Yes, we always allow the old subscribers the same privilege as is given to any new subscriber, any and all times.

Q. 25. You might say you mean to keep all subscribers as well as get new ones? A. We of course consider our old subscribers our best asset. We want to keep them satisfied, while we are reaching after new ones at all times.

7376

Q. 26. Did you sometime in August last introduce another circulation scheme similar to those outlined, in connection with a dictionary?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and involving a conclusion in the word "similar."

A. Yes.

John W. Nolan—Direct.

7377

Q. 27. What were the peculiar features of that scheme? A. It was the plan of the scheme that any reader of the "Union" by clipping six coupons from the paper and paying 98c could obtain a copy of a limp leather cover dictionary.

Q. 28. What was there particularly attractive about the scheme as outlined?

MR. HALE: Objected to as irrelevant, incompetent and immaterial.

7378

A. It was one of our most popular schemes that we ran. The people seemed,—they wondered how we could put the dictionary out at that price, a book of such good binding, such good paper and weight; also they were pleased with the size of the type. Also a number of them on looking the dictionary over in the office remarked that it was right up to date.

Q. 29. How did they come to the conclusion it was right up to date? A.

7379

MR. HALE: Objected to as incompetent irrelevant and immaterial in calling for the opinion of the witness.

A. Why looking over some of the up-to-date words, for instance, automobile, garage, chauffeur, a number of automobile terms, and other words which they considered of recent origin.

Q. 30. Did you ever have a dictionary scheme before? A. We used several dictionary propositions previous to the one of last August and not one of them was a success. We, several years ago, had one large dictionary, I believe it was published by the Werner Company, called "Webster Dictionary." We put that out in connection with

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John W. Nolan—Direct.

7382

a house to house canvass and asked the subscribers to take the paper for a certain length of time, paying therefor at the regular rate of 12c a week, if they took the daily and 17c per week if they took the daily and Sunday, also an added amount, I think it was 4c a week, covering the period that the contract called for. In fact it was what we call the installment scheme. I sent a number of canvassers out making canvass from house to house and they didn't have any success with the dictionary. I wrote—(It was the Saalfeld Company instead of the Werner Company. I believe they are successors of the Werner Company) I wrote the Saalfeld Company and they suggested I was probably not making the right kind of canvass and wanted to know if it would be agreeable to me to let them send on a Manager and let him conduct the canvass. I was willing to be shown, of course, and I told him I would be glad to have them send on a Manager and see what they could do. He came and tried it out and results were no better. The best he could do were two or three or four a day, that seemed to be an outside figure, four, so we gave it up.

7383

Q. 31. Why was it a failure?

7384

MR. HALE: Objected to as incompetent, irrelevant and immaterial in calling for mere opinion of the witness.

A. There were a few of the subscribers who had heard of the dictionary; they called at the office and wanted to go over it, and when we let them see the book, in several instances they looked for some of the more recent words and were unable to find them.

John W. Nolan—Direct.

7385

Q. 32. What was the aggregate price charged for the dictionary alone, irrespective of the subscription money? A. To the best of my belief it was about \$2.00, in the vicinity of \$2.00 on the installment plan.

Q. 33. Do you think the price had anything to do with the failure of the plan?

MR. HALE: Objected to as incompetent, irrelevant and immaterial in calling for the mere opinion of the witness.

7386

A. Yes, it did some.

Q. 34. Covering your experience in the Circulation Department, can you state about what price is the best price for these premiums?

MR. HALE: Objected to as incompetent, irrelevant and immaterial as calling for the mere opinion of the witness.

7387

A. Any price under \$1.00.

Q. 35. Would you call approximately 98 cents a psychological price? A. I would call that very much a psychological price.

Q. 36. In these circulation schemes which you have outlined, what as a fact do you undertake to feature most? A. We, of course, try to have the people think by getting the premiums through us they can do so at a better price than they could buy them outside, that is for the same degree of workmanship on whatever the premium may be.

7388

Q. 37. Is it not a fact that usually they do get the books, or phonographs or whatever it is, at a less price than the whole scheme costs?

7389

John W. Nolan—Direct.

MR. HALE: Objected to as incompetent, irrelevant and immaterial as calling for the conclusion of the witness.

7390

A. Yes, of course we are always willing to spend money for circulation. We always want to increase the number of subscribers and we feel as though we can afford to do so—that we can afford to lose a little on premiums if we can get a new subscriber thereby.

Q. 38. Do you think the public take this into consideration?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling merely for a speculative guess.

7391

A. I think they do from my experience; they look to us for it in a great many cases. Just to give you an illustration: We have had subscribers who have gone in, taken these premiums, and they have immediately gone to the different stores afterwards to find out what the same article would cost, and invariably it is quite a little higher.

7392

Q. 39. You think it an advantage then to feature your own name in connection with these schemes rather than the name of the manufacturer of the particular article you are using? A. Always. We are not out to advertise anybody; we want to advertise the "Union" first, last and all the time, and in all cases say that the "Union" is offering this. We simply make the proposition, whatever that is, secondary to the "Union."

Q. 40. Do you think that the prestige of the "Union" as it exists, assists in selling these premiums? A. There is no doubt of that. Anything that is offered by the "Union" is of course supposed to be good value, and there is no doubt

John W. Nolan—Direct.

7393

that some of these same things, if they were offered by others, they would not sell one quarter, I might say in some instances, one tenth of what the "Union" is able to dispose of.

Q. 41. What was the name of the dictionary which you were using in the circulation scheme which began in August last? A. I believe that was the "Webster". I didn't pay very much attention to that part of it. "The Webster Standard Dictionary," "New Standard Dictionary" or the "Webster New Standard Dictionary" was what we started advertising.

7394

Q. 42. Was that campaign a success? A. Yes, it was very much of a success.

Q. 43. What features in connection with it, do you think contributed most to its success?

MR. HALE: Objected to as incompetent, irrelevant, and immaterial and as calling for a conclusion and the opinion of the witness.

7395

MR. CARROLL: It would seem that this witness should be qualified as a circulation expert to give his opinion.

MR. HALE: That doesn't necessarily make opinion evidence competent.

A. In the first place I think the price of the dictionary was the attraction. After the people saw it, saw the binding, the limp leather binding, the quality of the paper on which it was printed, also the size of the type which was of fair size, (some people were objecting to small type) these were advantages. Also the fact, as some subscribers said, the fact that the book was right up to date, as a number of them called to see the book and looked over some of the up-to-date words.

7396

7397

John W. Nolan—Direct.

Q. 44. Did you receive any letters commending the book? A. We received a number of letters commending the book, and also commending us for our enterprise in being able to put out such a good book at such a cheap price.

7398

MR. HALE: The last question and answer is objected to as incompetent, irrelevant and immaterial and motion is made to strike out the answer. This objection is to apply to all other questions with respect to letters of the time mentioned, and also to the letters themselves, if they are offered in evidence.

Q. 45. I show you eight letters and ask you if these are some of those received by you, commending the dictionary which you were distributing?

A. Yes, every one of them.

7399

Q. 46. Now are these unusual?

MR. HALE: Objected to as calling for a conclusion of the witness in addition to the other grounds for objection mentioned.

A. No, they were some that I had taken from our files at random.

7400

The letters are by consent set forth in the record at length subject to the objections noted above and are further objected to upon the further ground that they are incompetent and no evidence at all of the facts recited therein, and are as follows:

August 28, 1912.

“Springfield Union,

GENTLEMEN:

I received the \$4.00 Webster's Dictionary. Am well pleased with it; the type in it is very plain,

1851

John W. Nolan—Direct.

7401

the illustrations in colors, the flexible binding and the very low price that you are putting it out for appeal to me.

I am very pleased with the colored page of Fruits and their Blossoms. The whole book is up to date and is O. K.

Yours truly,

L. BEACH,
Chester, Mass."

P. O. 241.

7402

II.

BELCHERTOWN, Mass., Nov. 3rd.

"We like the Dictionary so much want another, so please find \$1.20 one dollar and twenty cts., for it to be sent to me at Belchertown, Mass.

And greatly oblige,

P. O. Order.

HENRY A. PAINE."

7403

III.

"Thank you for the dictionary and promptness in sending. It is *fine* on first introduction, binding, type and contents, and I am sure will grow quite indispensable on further acquaintance.

JEAN KENDRICK,
Amherst, Mass."

Sept. 8, 1911.

IV.

7404

"So. DEERFIELD, Sept. 6th.

The Union:

I received one of your dictionaries to-day by a friend who called at your office for it. I am very much pleased with it and more than satisfied, and will recommend it to others.

EDGAR P. LEE."

1852

7405

John W. Nolan—Direct.

V.

“SPFLD., Aug. 26, 1911.

C. Dept. Union,

DEAR SIR:

7406

After looking over my purchase of one of your Webster new Standard Dictionary think all the features enclosed appeal to any and all to have such at their command even at a much higher cost. It is a bargain of learning and finance.

Yours Respect.,

F. W. WELLS,
486 Chestnut St.”

VI.

SOUTH DEARFIELD, MASS.,

7407

I like the book and enclose 98c, 22 for postage. I wish to give one to my sister and one *coupon*. Did not have time to get a money order.

MARTHA INGRAM,
So. Deerfield, Mass.

VII.

WALES, MASS., Nov. 15, 1911.

To Springfield Union:

7408

Please accept thanks for the beautiful dictionary. I like the whole book. It is light and handy to handle. A treasury of facts describe it in a few words.

AMY A. HISCOCK.

1853

John W. Nolan—Direct.

7409

VIII.

WILLIAMSBURG, August 18.

MR. EDITORS

I have received the dictionary I sent to you for and am very much pleased with it. I cannot say which feature I like best as it is all good and gotten up in better style than I expected it to be.

Yours, truly,

A. W. ALEXANDER.

7410

Q. 47. Did you have in addition to the regular advertising which you gave to this dictionary, in the last campaign mentioned, what you call "reading notices?" A. Yes, I had reading notices in connection with the regular display advertisements. Sometimes we would run them two or three days in succession and then we would skip a period of days.

7411

Q. 48. What is your usual price for reading notices of this kind?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

Q. 49. A. 40c a line.

Q. 49. What is your usual price for display advertising?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

7412

Q. 50. A. 90c an inch.

Q. 50. Was your profit on the dictionaries sufficient to pay for the advertising which you devoted to them?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

John W. Nolan—Direct.

7413

A. Yes, it was.

Q. 51. Including everything? A. Including everything.

Q. 52. Did you consider the coupons used in connection with this scheme as advertising?

MR. HALL: Objected to as incompetent, irrelevant and immaterial.

7414

A. No, we used the display advertising and reading notices to push the sale of the book.

Q. 53. I show you a collection of newspaper clippings and ask you if you cut them from the files of the "Springfield Union?" A. Yes, I did.

7415

MR. CARROLL: These advertisements are dated respectively August 21, 1911; August 23, 1911; reading notice August 24, 1911; reading notice of September 13th, reading notice of September 14th; advertisements of October 10th, October 14th, October 19th, October 21st; October 26th, both advertisement and reading notice; advertisements of October 27th and October 28th; November 9th, reading notice; and November 11th advertisement.

7416

Q. 54. I show you another newspaper clipping and ask you what that is? A. That was a communication sent to the "Springfield Republican" in regard to the dictionaries which we were offering.

MR. HALL: The answer is objected to as secondary, the documents speak for themselves.

Q. 55. Did you cut that clipping from the "Springfield Republican" yourself? A. I did.

Mr. Cramer: I offer this in evidence, it bearing date of October 1844, 1845.

Mr. West: The clipping from the "Springfield Republican" which has been offered in evidence is objected to as incompetent, irrelevant and immaterial and as no evidence of the facts stated therein; and further, upon the ground that it has in no way been connected with the complaint and is not binding upon the complainant.

7978

Q. 56. I show you Exhibit of October 1844, and ask you to read what is stated at the top of the page in large displayed type?

Mr. West: Objected to as incompetent, irrelevant and immaterial, as the Exhibit speaks for itself and was already in evidence.

7979

A. "This dictionary has been revised and brought up to the present date in accordance with the best authorities; and is not published by the original publishers of Webster's Dictionary nor by their successors."

Q. 57. Does that appear very conspicuously on the page?

Mr. West: Objected to for the same reasons and as calling for a conclusion.

7980

A. It does.

Q. 58. What appears enclosed in a box at the bottom of the page? **A.** "Are all our readers who gained the impression from the Union's announcement that Webster's New Standard Dic-

7421

John W. Nolan—Direct.

tionary, Illustrated' was published by the G. & C. Merriam Company, and purchased it for that reason, may return the book and we will most gladly refund expenses, bonus the amount. Furthermore, any person who obtained the dictionary at the 'Union' office and feels they did not get full value may have money back by returning book in good condition."

7422

Q. 59. Is that contained upon that page in large type?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as secondary.

A. It is.

Q. 60. Did anyone take advantage of this offer?

MR. HALE: Objected to upon the same grounds.

7423

A. Not one.

Q. 61. Did you have particular charge of the distribution of these dictionaries? A. I did.

Q. 62. If any one had come back with one of the dictionaries, would you have known of it? A. I would.

7424

Q. 63. Did any one, while you were distributing these dictionaries, make any comment about the publisher of the dictionary in any way? A. No.

Q. 64. Did any one ask whether they were published by the G. & C. Merriam Company? A. No, they did not.

Q. 65. Did some of the persons who purchased these dictionaries come back for others?

MR. HALE: Objected to as incompetent, irrelevant, and immaterial.

John W. Nolan—Cross.

7425

A. Yes, there were a number who bought more than one copy.

Q. 66. Have you a record of the sales of these dictionaries on October 18th? A. We have.

Q. 67. What were the sales on that date? A. 27.

Q. 68. Does that include all three styles of binding? A. It does.

Q. 69. What were the sales on October 19th? A. 56.

7426

Q. 70. October 20th? A. 53.

Q. 71. October 21st? A. 91.

Q. 72. October 23rd? Was the 22nd Sunday?

A. I think it was. 60 on the 23rd.

Q. 73. October 24th? A. 53.

Q. 74. October 25th? A. 50.

Q. 75. October 26th? A. 56.

Q. 76. October 27th? A. 50.

Q. 77. October 28th? A. 119.

Q. 78. November 6th? A. 119.

7427

Q. 79. November 7th? A. 124.

Q. 80. November 8th? A. 238.

Q. 81. November 9th? A. 397.

Q. 82. November 10th? A. 446.

Q. 83. November 11th? A. 894.

Q. 84. Was November 11th the close of the campaign? A. Yes, that was the closing date of the campaign.

Q. 85. That is all.

7428

CROSS-EXAMINATION.

x Q. 1. (Mr. Hale) I believe you stated that Mr. Swift, whom you had known of in connection with premium schemes, brought you this dictionary proposition. Is that correct? A. No, he didn't bring the dictionary proposition.

7429

John W. Nolan—Cross.

MR. CARROLL: I object to the question.

x Q. 2. Who did? A. Mr. Skeoch.

x Q. 3. Who is Mr. Skeoch? A. One of the road men for the Syndicate Publishing Company.

7430

x Q. 4. How did he introduce this dictionary scheme to your attention? A. Before we took it on we had received some literature through the mail, telling of the success of the proposition with other papers, and previous to Mr. Skeoch's coming, one other representative of the Syndicate Publishing Company stopped over on his way from the West and he gave us a number of instances where the dictionary was pronounced a success.

x Q. 5. Who was that?

7431

MR. CARROLL: I object to all this line of testimony as improper cross-examination, none of the matter herein contained having been touched upon in direct examination, and protest that the Counsel for Complainant is making this witness his own witness.

A. I don't remember his name.

x Q. 6. Any one call upon you in connection with this scheme before you took it up and arranged it? A. I believe not.

7432

x Q. 7. When was the scheme first brought to your attention? A. To the best of my knowledge it was along in June or July of 1911.

x Q. 8. Who represented the "Springfield Union" in negotiations? A. I did, and also took the matter up with Mr. Plummer, who at that time was manager, is now publisher.

x Q. 9. What part did you have and what part did Mr. Plummer have in these negotiations? A.

John W. Nolan—Cross.

7433

I was in favor of taking it on after hearing of the success of the proposition on the other papers that had been mentioned to us, and we finally took it on.

x Q. 10. What was Mr. Plummer's position at that time? A. You mean relative to taking it on?

x Q. 11. Yes. A. Non-committal.

x Q. 12. Did you accept the proposition on the original terms offered?

7434

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial.

A. Partly.

x Q. 13. What was the variation? A. Well on any scheme, any circulation scheme, it may be a good thing in one section of the country, get good results, and not be able to get the same results in another section. In my experience on some things, that has occurred. From time to time men have told me they have had big results on a certain proposition, for instance in the middle West, come on here, try it out exactly along the same lines and results did not measure up anywhere near to what they claimed had been in their section.

7435

x Q. 14. And all these considerations resulted in what modifications of the proposition as originally brought to you? A. Nothing.

x Q. 15. You said there was a variation? A. Well I simply gave my explanation, I told you the considerations that I considered partly. Perhaps I might have qualified that by simply giving you these reasons. That was the only hesitancy on our part in taking on the proposition. We had heard it went in one or two other sections but

7436

John W. Nolan—Cross.

7437

there was a question in our mind whether it was going to go in this section. Also because I had tried out a dictionary proposition in the city here previously, as I testified to a little while ago, and the results from the circulation standpoint was practically nil. Three or four dictionaries a day might be good from the publisher's standpoint but it would not be good for us from the circulation standpoint and in all these things I try to keep the circulation of the "Union" in mind.

7438

x Q. 16. How did you provide for that in the arrangement which you made with the Syndicate Publishing Company? A. We simply arranged to take the books on sale and return whatever we did not use.

x Q. 17. Was that a feature of the proposition as first brought to you? A. Yes, in fact the only way we will consider any proposition that is offered to us is that.

7439

x Q. 18. In other words you handle the books practically on consignment? A. Practically yes.

x Q. 19. Did the proposition involve any paid advertising in the "Union" to be paid for by the Syndicate Publishing Company? A. Now for that part of it, that was—the contract was signed up by Mr. Plummer and he will have to answer that question.

7440

x Q. 20. Contract signed by whom? A. Mr. Plummer.

x Q. 21. Is Mr. Plummer in the city? A. I believe so.

x Q. 22. Have you seen him today? A. He was this noon.

x Q. 23. Have you ever seen that contract? A. I have looked it over hastily. I looked it over from the view point of circulation, on having the books taken back, the return privilege.

John W. Nolan—Cross.

7441

x Q. 24. When did you last look at that contract? A. Should say about the time—just before it was signed up, I believe, I don't remember looking at it since.

x Q. 25. Defendant is called upon to produce the contract referred to for use in cross-examination.

MR. CARROLL: I refuse to, as no subpoena *duces tecum* has been issued, and further on the ground that it is incompetent, irrelevant and immaterial and that the whole line of this testimony is improper cross-examination. 7442

MR. HALE: Complainant responds he had no notice of the name of the man who would be produced and that complainant could not subpoena examined witness during the defendant's time for taking testimony. 7443

x Q. 26. Was there a provision in that contract for a certain amount of advertising in the "Union" to be paid for by the Syndicate Publishing Company? A. I would have to refer to the contract to be sure of that part.

x Q. 27. What is your best recollection, opinion and belief? A. That they were to furnish a part of the copy for us and to advertise it for us in good shape, to feature it. 7444

x Q. 28. Did they carry out that agreement on their part? A. I think so.

x Q. 29. Did that contract provide for anything which the Springfield Union should do in the way of advertising for which the Syndicate Publishing Company were not to pay directly?

7445

John W. Nolan—Cross.

MR. CARROLL: I object to that question on the ground that this witness has not testified that the Syndicate Publishing Company should pay directly for any advertising, in fact distinctly stated it was not to. He simply said they were to supply a part of the copy.

7446

MR. HALE: Statements of the counsel objected to as not in accordance with the testimony of the witness.

A. I will have to explain that in my way. We, of course, reserved the right to take any copy that came into the office and make it according to the policy of the proposition. If there was anything in the copy that came in, of course, we reserved that right to make any change we saw fit.

7447

x Q. 30. Now will you please answer the question as asked. (To stenographer) Please read question. (Question read) A. There was nothing in the contract I think specifying that particular point, not to my recollection.

x Q. 31. Did the Syndicate Publishing Company pay the "Springfield Union" for all the advertising matter that appeared in this dictionary campaign? A. That was all charged up to them, every inch of advertising.

7448

x Q. 32. How was that charge balanced or settled? A. When we made the settlement we deducted the amount of the advertising from the remittance.

x Q. 32. At what rates were these deductions made? A. At the rate per inch.

x Q. 33. How much per inch? A. I cannot say now, would have to refer to the books.

x Q. 33. Not the usual rate per inch to which you formerly testified? A. Our regular space rate, as you know probably, in newspaper advertising is a standard rate. The standard rate is based, as you might say, upon small amounts of advertising at 90 cents an inch. Special rate if you use a certain amount of space in a specified time; you get a better rate if you use a thousand inches in a month or five thousand inches in a month than if you used a hundred inches in a month. 7450

x Q. 34. What rates did you give the Syndicate Publishing Company for this campaign? A. I would have to refer to the books to find it out.

x Q. 35. What is your best knowledge, information and belief? A. I don't remember.

x Q. 36. No recollection whatever on that subject? A. No.

x Q. 37. You recollect it was considerably less than 90 cents an inch for the display advertising? A. I don't remember. 7451

x Q. 38. What is your best belief on that subject? A. I wouldn't want to say.

x Q. 39. Do you believe you charged them for it at the rate of 90 cents per inch? A. No, not on the space advertising.

x Q. 40. You know you did not, don't you? A. Yes, quite sure.

x Q. 41. Did you charge them half that? A. Probably more. 7452

x Q. 42. How much more? A. I can't say.

x Q. 43. Are you sure it was more? A. I think so. You must remember I looked after the circulation, not the advertising. I pushed this dictionary from the circulation standpoint, not from the advertising standpoint.

x Q. 44. Did the Syndicate Publishing Com-

7453

John W. Nolan—Cross.

pany pay 40 cents per line for the reading notices?

A. Why, I believe that was charged up with the other.

x Q. 45. At one rate? A. At one rate, I believe so.

x Q. 46. Did the Syndicate Publishing Company guarantee any specified amount of advertising it would use? A. I cannot say as to that.

7454

x Q. 46. What is your best belief? A. I think they assured us that it would be as in the contract, whatever was referred to in the contract to be used.

x Q. 48. They assured you the advertising would amount to a certain number of dollars?

A. Why, in their talk with me. Of course talk and a contract are two different matters.

x Q. 48. You offered the dictionary at three different prices, did you not? A. Yes.

7455

x Q. 49. And 48 cents was the lowest? A. Yes.

x Q. 50. Do you mean to say the amount received at the prices stated was enough to cancel the charge for all the advertising at the rate agreed upon? A. I do.

x Q. 51. And leave a profit to the "Springfield Union"? A. I cannot say as to the profit.

x Q. 52. You have testified there was a profit. A. When did I testify that?

7456

x Q. 53. You said the profit which should remain after the price agreed for the advertising was deducted to be divided between the Springfield Union and the Syndicate Publishing Company. A. I don't remember.

x Q. 54. Were the dictionaries billed by the Syndicate Publishing at a price less than the price offered in your advertisements, to wit, 98 cents, 81 cents and 48 cents respectively? A. You mean

John W. Nolan—Cross.

7457

were they billed to the Springfield Union by the Syndicate Publishing Company?

x Q. 55. Yes. A. They were.

x Q. 56. At what price were the books billed to the Springfield Union. A. 48c was the lowest price; those cost us——

MR. CARROLL: I object to that question and direct that the witness does not answer it.

7458

MR. HALE: The direction of the counsel is objected to as an improper interference with cross examination and the Examiner is requested to certify to the Court the propriety of the question and judge if the witness should not answer.

x Q. 57. Will you please answer the last question now?

MR. CARROLL: He is directed not to.

7459

A. I do not care to answer.

x Q. 58. After the Syndicate Publishing Company was charged with the amount of advertising used in this campaign and was credited with the price of the books agreed upon to be paid to the Syndicate Publishing Company, which was something less than the price at which they were offered to the public by the Springfield Union, was there still a surplus left? A. As I said before I cannot say to that.

7460

x Q. 59. This dictionary premium offered by your paper was not one of the instances, to which you testified on direct examination, where the public got the goods for less than they cost the paper, was it? A. After charging up the advertising and all other expenses, express charges,

7461

John W. Nolan—Cross.

freight charges, cost of handling, all that, I don't know but they were, clerk hire, also cost of mailing.

x Q. 60. And these items came out of receipts from what your advertisers term the "expense bonus" did they not? A. They were supposed to.

7462

x Q. 61. As a matter of fact, they did, did they not? A. No, not all. The extra clerk hire we didn't charge in direct against the account, we charged that up to one of our other items.

x Q. 62. How many extra clerks did you employ for this purpose? A. From one to three, depending upon the amount of business, demand from the counter and also the amount of help required to mail them.

7463

x Q. 63. Have you any information as to whether or not when the whole campaign was closed, a balance was due from the Springfield Union to the Syndicate Publishing Company on account of receipts from the sales of dictionaries? A. I don't remember.

x Q. 64. What is your best recollection, opinion and belief? A. I don't remember as to that.

x Q. 65. Have you no belief whatever upon that subject? A. As I told you, I had been working from the circulation standpoint. After it was over, I didn't concern myself with that part of it.

7464

x Q. 66. I am entitled to obtain your belief on this subject. Will you please state what it is? A. I can't very well answer your question when I don't remember.

x Q. 67. You have no belief whatever on the subject then? A. If a man doesn't remember, is that a sign he has no belief?

x Q. 68. The question was, what do you believe as to whether or not there was a balance due to the

Syndicate Publishing Company on account of this dictionary campaign.

MR. CARROLL: Objected to as incompetent, irrelevant and immaterial, on the ground that his belief when the party has testified he remembers nothing about it is obviously incompetent.

A. I think they broke nearly even.

x Q. 67. This dictionary scheme, as handled by your paper, didn't contain the requirements that persons desirous of obtaining a dictionary should subscribe to your paper for any specified length of time, did it? A. No.

7466

x Q. 68. All they had to do was to present six coupons? A. That was all.

x Q. 69. At what price does your paper sell? A. 2c. per copy for the daily paper and 5c. for the Sunday paper.

x Q. 70. Did you always require six coupons? A. We did until the wind up, about the last week I think.

7467

x Q. 71. What was the circulation of the Springfield Union prior to the first advertisement in the dictionary campaign? A. That is starting in August, about 23,000 or 24,000, about 24,000, I should say to the best of my knowledge.

x Q. 62. And the circulation of the paper had been growing in recent months? A. Been growing since then?

7468

x Q. 63. Had it been growing at that time in recent months? A. Yes.

x Q. 64. At what rate approximately? A. At the rate of possibly four or five hundred a month, on the average.

x Q. 65. The Springfield put its reputation and

John W. Nelson—Cross.

7469

standard back of this dictionary proposition, did it not? A. In a way, yes. We thought the book had some merits, and was well put up.

x Q. 66. And you have testified that the public attitude toward newspaper premium schemes is that the standing and reputation of the paper is an assurance of the quality of the goods, and their value. Is that correct? A. As to their value?

x Q. 77. Yes. A. Yes.

7470

x Q. 78. That the goods are worth the value asked by the paper? A. Yes.

x Q. 79. So they really depend upon the character and standing of the paper as an assurance of the genuineness of the goods? A. As a rule, yes.

x Q. 79. Do you think they did so in the dictionary campaign? A. What do you mean by that question, be more explicit.

7471

x Q. 80. Just what I meant on the previous questions which you found no difficulty in answering. A. As to the genuineness, genuineness of what?

x Q. 81. Can you answer the question?

W. Cross: He asked you to explain it.

A. Not until you explain it.

x Q. 82. The witness found no trouble whatever in answering the previous questions until the word "dictionary" was mentioned and I see no reason for difficulty on that.

7472

W. Cross: The witness has asked to have it explained, stating he does not understand it.

A. Will you ask that question once more.

x Q. 83. (To stenographer) Will you please

and that question? (Question read). A. That only upon the fact that we were offering them a dictionary that was worth more than \$6. For we suppose plus \$6. for a long leather edition.

Q. 41. Offering what kind of a dictionary? A. A dictionary as advertised in the Union as "Webster's Dictionary",—as advertised in the "Union" at that time.

Q. 42. What was said to you by the representative of the Syndicate Publishing Company when he first brought this proposition to you? A. He simply talked to us. He talked simply about the dictionary and the circulation proposition.

Q. 43. Didn't say anything about the popularity of the Webster Dictionary? A. He simply stated the assurance that I had no other papers.

Q. 44. He did then say something to the effect that Webster Dictionary was popular? A. He said that his particular proposition as offering in connection with these newspapers was a success and was very popular.

Q. 45. Did he mention the name of the dictionary in that connection? A. He showed the dictionary; the title was there, "Webster Dictionary", gotten out by the Syndicate Publishing Company.

Q. 46. Did he at any time during these negotiations say that Webster's Dictionary was popular with the public? A. He didn't specify "Webster's" at any time.

Q. 47. Never said the name? A. Not to my knowledge. We simply talked in a general way of dictionaries. Everybody wanted a dictionary as well as a Bible, also one of those readers as everybody should have a set of Shakespeare and have a complete literary education.

x Q. 91. Did he ever say anything in substance or to the effect that Webster's Dictionaries were very well known? A. Not to my knowledge.

x Q. 92. Have you here present any of the first literature which you say you received in connection with this proposition? A. You mean here?

x Q. 93. Yes. A. What are the dates of some of those advertisements?

x Q. 94. I mean the literature you received when the proposition was first brought to your attention? A. No, I don't know as I have anything of that sort now.

x Q. 95. You saw the book represented in that literature? A. It was represented as a dictionary, as being a pronounced circulation winner for any paper that would agree to take it up.

x Q. 96. Did it go into the merits of the book? A. No, it went into the merits of the scheme, the coupon scheme.

x Q. 97. Who prepared the advertisements which appeared in the Springfield Union on this dictionary? A. The Syndicate Publishing Company prepared most of them. That is an arrangement we like to make with any concern where we are pushing their proposition, whether it is books or merchandise, and they have experts in their line, where they can play up these things better than we can, have more time.

x Q. 98. You allowed them the use of the name of your paper for that purpose? A. We advertised the dictionary, the Union was first, the dictionary afterwards.

x Q. 99. What was the character of the changes, if any, which the Union made in the advertising matter furnished by the Syndicate Publishing Company? A. Well, I can't say offhand. We reserv-

ed the right, if there was anything that we cared to change we wanted the privilege, in fact we used it. There may have been something in some of the copy that may not have fitted local conditions.

x Q. 100. Do you recall any specific changes which you made in any of these advertisements?

A. No, nothing now.

x Q. 101. None of them were very material? A. No.

x Q. 102. When this proposition was first brought to you, was that the first time you had ever heard of a "Webster's" dictionary? A. Why, yes, we had used the dictionary before, a Webster's Dictionary before on the canvas, and it was a failure.

x Q. 103. That was the book which you said was published by Werner or Saalfield, Werner's successor? A. Yes, they had a Webster's Dictionary.

x Q. 104. Was that book taken from the 1847 Webster Edition? A. It was an old edition, don't remember what year.

x Q. 105. You say it was poorly printed and bound? A. Just fair, supposed to be a sheep-skin binding, if I remember rightly.

x Q. 106. Was it as a matter of fact? A. Supposed to be, I didn't notice that part to find out whether it was or not, I am not an expert.

x Q. 107. Paper also was poor, was it not? A. Just fair.

x Q. 108. Do you remember that book was on sale at the department stores for about a dollar at that period? A. I know the book was offered, I can't say whether it was before or after we used it.

x Q. 109. About that time it was offered? A.

John W. Nolan—Cross.

7485

I can't say what price either. I am not certain just what price we charged on the canvas at that time. At that time, I know what we used had no connection with the canvas, it was to be used on the instalment plan and where a premium is used on the instalment plan it is, of course, supposed to be fairly popular.

7486

x Q. 110. When this Syndicate Company's dictionary was brought to you did not it occur to you that there was any danger of confusion in the public's mind as to the identity and origin of that book? A. No.

x Q. 111. You knew at that time that the Merriam Company in this city had been publishing Webster's Dictionaries for a great many years, did you not? A. I knew that, and also knew that other concerns published Webster's dictionaries, such as the Ogilvie Company.

7487

x Q. 112. Never mind what else you knew, you knew that, didn't you? A. I did.

MR. HALE: The witness's answer after the words "I knew that" is objected to as not responsive and the motion is made to strike it out.

x Q. 113. Have you any objection to confining your answer to the question asked? A. Not if I can fully explain the question in the answer.

7488

x Q. 114. It did not occur to you then that there was any possibility of a book advertised under the name of "Webster's" Dictionary being assumed by the public to be the Webster's dictionary long published by the Merriam Company? A. If there had been any such assumption on the part of the public we would have heard of it.

John W. Nolan—Cross.

7489

MR. HALE: The answer is objected to as not responsive and motion is made to strike it out.

x Q. 115. The question is, did that possibility occur to you, when this proposition was brought to you, that admits of an answer "Yes" or "No." A. No, that possibility did not occur to me.

x Q. 116. All the other circulation schemes which you commented upon in your direct examination involved a subscription for the paper for a stated period, did they not, and I call your attention to the "Dot" campaign, the "pony" and "flag" schemes and the "phonograph" scheme? A. All of the foregoing mentioned schemes called for subscriptions for a stated period.

7490

x Q. 117. Did you ever indulge in a premium circulation campaign before this dictionary scheme in which the maker or manufacturer of the premium guaranteed the paper against loss? A. I didn't catch just your meaning. What loss? There are two ways of looking at guaranteeing us against loss, in what way, on the carrying of the premium?

7491

x Q. 118. In any way. A. Well, wherever we can on any deal we enter into, we of course seek to protect ourselves just as fully as possible.

x Q. 119. I am asking you, have you entered into any deal where the concern that furnished premiums to the paper guaranteed the paper against loss?

7492

MR. CARROLL: The witness has indicated that he doesn't fully understand the question. Explain it and he will probably give you an intelligent answer.

7493

John W. Nolan—Cross.

MR. HALE: The question needs no explanation.

MR. CARROLL: Probably not to you who framed it.

A. I have answered it as fully as I can that way.

x Q. 120. You recall any such instances? A. Not just now.

7494

x Q. 121. You recall any scheme in which the supplier of the premium guaranteed the paper a definite amount of advertising receipts for advertising in connection with the circulation campaign before this dictionary campaign? A. I don't remember now.

x Q. 122. None of the schemes you have mentioned did that? A. The most of the schemes I have mentioned are on a canvas, canvassing proposition instead of coupon proposition.

7495

x Q. 123. And the paper took its own chances on them as to the result? A. As to the results, any we ran, we had the return privilege on all propositions, we were protected in that way.

x Q. 124. You were not paid for your advertising? A. We didn't advertise in all of those instances; in some of the instances we did.

7496

x Q. 125. You were never paid for that by the supplier of the premium except in this dictionary instance? A. In some of these propositions the sales of the premiums in a way paid for most of the advertisement.

x Q. 126. And the paper assumed the risk of the sales being sufficient to pay for that? A. Yes, we took the chance, the same as we have to take a chance on any proposition we use.

x Q. 126. Who was the outside man from whom you obtained the "Dot" and "Pony" schemes?

A. I don't remember his name now, that was a number of years ago.

x Q. 128. It was not then the same man Swift who supplied those premiums? A. I was going to remark further in regard to the guarantee against loss and on taking a chance on things. Of course, you know in the circulation game that some of the premiums you use on a canvass, instead of using them by advertising in the paper, and you can possibly incur a loss on canvassing expenses and one thing and another and that way you are taking a chance either way.

7498

x Q. 129. What was the total number of dictionaries disposed of in this campaign? A. Twelve thousand and something.

x Q. 130. In a period of how many weeks? A. From August 18th, up to the close, which was November 11th.

x Q. 131. During that period were daily advertisements carried in the paper? A. Nearly every day.

7499

x Q. 132. Who supplied the copy for the reading notices which appeared? A. Most of it was furnished by the Syndicate Publishing Company and I believe in some cases revamped by the Union.

x Q. 133. Prior to the advertisement in the issue of October 21st, 1911, did your advertisements contain a statement in form as follows: "This dictionary has been revised and brought up to the present date in accordance with the best authorities and is not published by the original publishers of Webster's Dictionary, or by their successors, but by the well-known Syndicate Publishing Company of New York"? A. I will have to refer to these files there.

7500

John W. Nolan—Cross.

7501

Witness refers to files.

A. I think not.

x Q. 134 In other words, the issue of October 21st was the first issue to contain that notice in any form? A. Yes.

7502 x Q. 135 In this advertisement of October 21, 1911, appears the statement, "Some months ago the Union decided to present to its readers an opportunity of securing for themselves a MODERN dictionary, along the lines of the great and successful plan in operation with 200 or more of the largest Metropolitan papers in the United States." The decision there referred to means the acceptance by the Springfield Union of the proposition brought to it by the Syndicate Publishing Company? Is that correct? A. Yes, upon their assurance that it had been a success on other papers, we took it up.

7503 x Q. 136 Who furnished the copy for this advertisement of October 21, 1911? A. Most of the facts were furnished by the Syndicate Publishing Company.

x Q. 137 Was not the entire copy for that furnished by the Syndicate Publishing Company? A. I cannot say as to that.

x Q. 138 What is your best belief on that subject? A. I think most of it was.

7504 x Q. 139 Was any part of the advertisement except that contained in the box at the foot, which contains the offer to refund the money to dissatisfied purchasers, if there were any such, prepared by the Springfield Union or any of its representatives? A. I cannot say.

x Q. 140 What is your best belief? A. I think not.

1877

John W. Nolan—Cross.

7505

x Q. 141. If I should show you a precisely identical advertisement clipped from a Western newspaper, using the same words and the same form of display would that refresh your recollection as to whether or not the copy was furnished by the Syndicate Publishing Company or prepared by the Springfield Union?

MR. CARROLL: I object to that question unless the paper specified is produced.

7506

MR. HALE: I produce and show you an advertisement clipped from the "Peoria Star" of Peoria, Illinois, dated November 15, 1911.

x Q. 142. Upon inspection of both these advertisements I ask you who prepared it the Springfield Union or representatives of the Syndicate Publishing Company.

7507

MR. CARROLL: I object to this question on the ground that the last mentioned advertisement is dated November 15th, at least three weeks after the advertisement appeared in the Springfield paper, and therefore cannot refresh the recollection of this witness as to the origin of the earlier advertisement.

x Q. 143. Let the witness answer the question please. A. As I told you before I think the Syndicate Company furnished most of the facts.

7508

x Q. 144. And the language also? A. The facts and the language likewise.

x Q. 145. At the time this Syndicate Company proposition was brought to you did any one bring to you a proposition to use Webster's Condensed

7509

John W. Nolan—Cross.

Dictionary in the same manner? A. A representative with Webster's Condensed of Merriam's Edition?

x Q. 146. Yes. A. There was a representative from Reilly & Britton of Chicago who stopped off in Springfield along about that time who said he had a Webster's Dictionary and wanted to have us take it up.

7510

x Q. 147. Did you consider his proposition? A. No, because he stopped over here just about the time that we were starting in on this, if I remember rightly.

x Q. 148. Had you already closed with the Syndicate Proposition? A. We had or were about to—.

x Q. 149. You had made up your mind on the proposition? A. We had made up our mind to use the Syndicate Company's books.

7511

x Q. 150. Do you remember the precise date? A. No, I do not.

x Q. 151. This advertisement of October 21, 1911 says that you adopted the Syndicate Company's Webster's New Standard Dictionary among other reasons because it was based on the unabridged dictionary of Noah Webster, L.L.D. but was revised and brought up to date in accordance with the most recent eminent English and American authorities. Did you know that statement to be true at the time you published this advertisement? A. We supposed it to be true.

7512

x Q. 152. What were the grounds of that supposition or belief? A. The fact that it was being brought up to date and all editions of dictionaries are based upon the original Webster's are they not?

x Q. 153. All dictionaries? A. Yes, practically all the English dictionaries are based upon original Webster's.

x Q. 154. Was that idea the basis of this statement in this advertisement? A. Mostly so.

x Q. 155. Did you know whether or not that statement was true or false when you published it? A. We considered it true.

x Q. 156. And upon what facts did you act, facts or representations did you act in publishing that statement? A. Upon the facts furnished to us by the Syndicate Company. 7414

x Q. 157. And you did not pursue the inquiry further? A. Why no. We already knew that Ogilvie had been publishing a large edition after some litigation with the original publishers of the Webster's.

x Q. 158. Then it did occur to you at that time that there might be some question over the use of the word "Webster's" when it was not published by the Merriams? A. No. 7515

x Q. 159. What did you mean by your last answer? A. I simply meant that Ogilvie received permission to publish his dictionary on a copyright, or whatever it might have been, on the original Webster, that had long before expired, in fact had decayed.

x Q. 160. You knew that at that time and acted upon that belief did you? A. We acted upon that belief. 7516

x Q. 161. In this same advertisement you referred to the fact that another dictionary of similar form, even copying a portion of the features of that book, as stated by the advertisement, was on sale at stores in Springfield for 90 cents? A. Yes.

7517

John W. Nolan—Cross.

x Q. 162. To what book does that language refer? A. To another limp leather edition on sale here in the stores.

x Q. 163. Published by whom? A. I believe Cupples & Leon.

7518

x Q. 164. And you remember, do you, the title that book was "Webster's New Century Dictionary"? A. I remember that it was "Webster's" dictionary with some qualification.

x Q. 164. And you remember, do you, the title had the words "Webster's Dictionary"? A. With some variation of title.

x Q. 165. You don't remember that any referred to the Webster's Condensed Dictionary of the Merriam Company? A. No, I don't think that was on sale in this city.

7519

x Q. 166. You also stated in the same connection with this 90c. dictionary that 90c. is "all and more than it is worth." What did you know on that subject? A. The copy that I saw the binding seem to be a little poorer than what we offered.

x Q. 167. Was that all you meant by that statement? A. Mostly, its general appearance.

x Q. 168. How about the literary contents? A. I didn't look through the book, we were pushing our books, not theirs.

7520

x Q. 169. This same paragraph referred to this same 90c. book of Cupples & Leon and stated "It has not had the same revision." What do you know about that? A. I cannot say anything on that.

x Q. 170. Did you not know that Cupples & Leon's was printed from a duplicate set of plates the same as the Syndicate Company used? A. I never took the trouble to look it up.

x Q. 171. What is your best knowledge, information, recollection and belief on that subject? A. I have no information on it. We were just pushing the Syndicate books.

x Q. 172. Have you any information upon that subject? A. Not personally, except what was furnished to us.

x Q. 173. You heard that book was printed from these same plates, have you not? A. Since then I have, but not at the time, when we were offering the Syndicate book.

7522

x Q. 174. At the time you took up this book did you know it was a book printed from the plates of an older dictionary formerly published under another name? A. At the time we took up what books?

x Q. 175. The Syndicate Company books. A. That it was formerly printed under another name?

7523

x Q. 176. Yes. A. No.

x Q. 177. Did the Syndicate representative tell you anything along that line? A. I don't remember that he did.

x Q. 178. Do you remember that they did not? A. I do remember that they emphasized the fact that the book had been brought up to date, that it was a popular size, good binding, printed on good paper about the right size type and on these features we pushed the book.

7524

x Q. 179. Did they tell you how it was brought up to date? A. I don't remember as they did.

x Q. 180. What did they say about the careful revision of it bringing it up to date? A. If I remember rightly, the substance of their talk was they had put in a good deal of time and money in bringing it up to date in every way.

x Q. 181. Did they tell you it had been brought up to date by blotting in a few words in place of some which had been moved off in order to get out of that? A. No.

x Q. 182. Did you know that fact? A. No.

x Q. 183. Did they tell you the book was printed from the plates of an older dictionary? A. No.

x Q. 184. Did they tell you books were furnished to the public from the same plates under the name of the *Crown Dictionary*? A. No.

x Q. 185. Did you know that fact? A. No.

Mr. Commons: I object to that question on the ground that it is admitted in the record that the plates of this book were first prepared in 1868 and the book was then published under the name of the *Crown Dictionary*; and it further appears from the record that since that date, 1868, that the book has received several revisions, and had plate changes which is the accepted method of revising dictionaries, when it is too expensive to prepare entire new plates.

Mr. Moore: The statement of counsel is objected to as intending to convey knowledge to the witness under the guise of an objection and protest is made against that sort of thing.

x Q. 186. In this same advertisement referring to its being up to date after the words "revised" "Electronium" and several other words connected the advertisement and that "This dictionary contains thousands of such words of present common use." Did you know when you published this advertisement whether or not that

statement was true? A. We took it for granted that they were.

Q. 187. It states that these "thousands" of words were omitted from what is termed "The Omission" book, referring to Webster's Unabridged Dictionary. Do you have anything to say that was true? A. No, I never took the trouble to look it up.

Q. 188. Was there some book or other you published the advertisement? A. I took it from some other book authoritatively looked it up.

Q. 189. This advertisement further states that the Springfield Union adopted this book because "it is up-to-the-minute" and further that "A book of reference should be portable and it must be modern." Did you have anything to say that description was true as applied to this Omission book? A. We took it for granted it was, upon their assurance.

Q. 190. The assurance of the Springfield Publishing Company? A. Very respectfully no.

Q. 191. Was made no further investigation of it? A. No, didn't have time, too busy.

Q. 192. The same advertisement also states that the book of the Springfield Publishing Company includes "Thousands of new words that have been added to our vocabulary within the last twenty years and more to the present year," what was the year 1911? Did you have anything to say that statement was true when you published it? A. We supposed it was.

Q. 193. Was the book of that description was the representation of the Springfield Publishing Company and no other investigation? A. No.

Q. 194. Is that same advertisement in the paragraph marked "D" you stated authoritatively

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John W. Nolan—Cross.

that the text matter of the "Condensed" book referring to Webster's Condensed was compiled 60 years ago, is that statement true? A. We simply took the statement of the Syndicate Publishing Company.

MR. CARROLL: I object to that as incorrectly stating the fact.

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MR. HALE: The paragraph itself shows the correctness of the question.

x Q. 195. You didn't know whether that statement was true or false then? A. No.

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x Q. 196. The same advertisement also says that the Springfield Union adopted and used this book, Paragraph "I" because no representations are made that are not borne out by fact; "educators, teachers, instructors, private and public institutions are loud in their praises of this modern dictionary." Was that statement made by the Springfield Union upon its own knowledge or is it an acceptance of matters sent to it by the Syndicate Publishing Company? A. We received hundreds of compliments upon the dictionary, and no complaints from any of the persons who bought the copies.

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x Q. 197. From what public institutions did you receive any such "loud praises?" A. I don't recall just now.

x Q. 198. Do you recall the fact that you did receive any from any public institution? A. We received so many that we didn't attempt to specify them by putting them in any particular class.

x Q. 199. Then you did make this statement upon its reliability upon information received from the Syndicate Publishing Company? A. Partly, yes.

x Q. 200. This same advertisement in the paragraph on the left, marked "L" states that the "Book distributed by the Union was based upon the unabridged dictionary of Noah Webster and no other." Is that statement true of your own knowledge? A. We accepted the statement of the Syndicate Publishing Company.

x Q. 201. And had no other information or evidence upon that subject? A. We thought that was sufficient.

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x Q. 202. Would you have accepted this book and published this advertisement if you had known that this book was a reprint from the same plate as the Crown Dictionary? A. If it had been brought up to date it may have had some bearing upon the matter.

x Q. 203. Would you have accepted this book in this manner and published this advertisement if you had known this book and the Crown Dictionary were both very largely compiled from the English—

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MR. CARROLL: I object to that, as that does not appear in the whole testimony, in fact the whole testimony is directly to the contrary.

A. We might have, if it had been thoroughly brought to date in every way.

x Q. 204. Did you know whether or not this book was founded upon an English book and not on Webster's Dictionary when you undertook this dictionary and published this advertisement?

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MR. CARROLL: Objected to as assuming a state of facts entirely opposite to the evidence.

John W. Nolan—Cross.

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A. We relied upon the integrity of the Syndicate Publishing Company.

x Q. 205. And the public relied upon the integrity of the Springfield Union? A. They did and we have yet to receive a complaint. Showing they are satisfied.

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x Q. 206. You were willing to put the integrity of the Springfield Union back of the statement which I have read you from this advertisement? A. We have yet to regret it.

x Q. 207. You were willing to do so with no further investigation? A. It was evidently justified, everybody seems satisfied.

MR. HALE: The answer is objected to as not responsive and motion is made to strike it out.

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x Q. 208. This whole advertisement is in the name of the Springfield Union and states specifically that the Springfield Union adopted the Syndicate Company's book in preference to Webster's Condensed Dictionary because of the facts enumerated, among other facts which are also enumerated. How do you justify that in view of your testimony that the Springfield Union made no investigation but relied upon the representations of the Syndicate Publishing Company? A. Because we considered the principals of the Syndicate Publishing Company men of integrity in every way.

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We didn't think for a minute that they would foist anything upon the public but what had an actual value, and as I said before of all the dictionaries we sold in this section we have yet to find any dissatisfied buyers. We still stand ready if there are any such persons to refund the money at any time.

x Q. 209. You didn't believe that the Syndicate Publishing Company would foist off upon the public an old dictionary known as the "Crown Dictionary" under the guise and name of a Webster's Dictionary, did you?

MR. CARROLL: Objected to as not stating the facts. A dictionary prepared eight years ago and frequently revised should not be called "old" in comparison with an edition of 1884 sold by the Merriams.

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x Q. 210. Please answer the question. A. We accepted the dictionary as it was offered to us and upon the assurance that they gave to us that it was brought up to date, and as it had good binding, was printed on good paper and of the right size and type to please the majority of the people.

x Q. 211. Then the Springfield Union was perfectly willing to lend its prestige to a scheme to deliver to the public the Crown Dictionary under the guise of a Webster's Dictionary?

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MR. CARROLL: I object to the form of that question on the ground that it has been testified that the Crown Dictionary which was prepared only eight years ago was based on Webster.

A. We did not recognize the Crown Dictionary in the matter one way or the other. We simply recognized the book of the Syndicate Publishing Company as shown to us.

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x Q. 212. And you supposed it was what it purported to be, is that correct? A. We did.

x Q. 213. In other words you supposed it was a Webster's Dictionary? A. We supposed it was

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John W. Nolan—Cross.

one edition of Webster's Dictionary brought up to date.

x Q. 214. Then if you had known that the book was a reprint of an old English Dictionary—

MR. CARROLL: I must object to any such question as that is not a fact and counsel knows he has no proof of any such things.

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x Q. 215. Then if you had known at the time that the Syndicate Company's book was a reprint of an English Dictionary and contained English forms of spelling and English forms of definitions would you have been willing to accept it as a Webster's Dictionary; and would you have been willing to publish and stand behind this advertisement of October 21st? A. It seems to me as for the definitions, etc., between the American and the English there must be very little difference and if there is any material difference, the fact of their being brought up to date any such cases occurring would be changed accordingly.

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x Q. 216. I am asking you if you had known that this book was based upon and in fact was practically a reprint of an English Dictionary, instead of believing that it was based on the unabridged dictionary of Noah Webster, would you have been willing to lend the prestige of the Springfield Union for the exploitation of it as Webster's Dictionary? A. I think I answered that question before.

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x Q. 217. Answer it once more, please. A. By stating that if it was brought up to date all those changes necessary would have been made, and furthermore as I stated before, the proof of it is that the public seems satisfied as we have yet to find any dissatisfied buyers.

x Q. 218. If I understand you correctly, if any person to-day should take an old English dictionary and bring it up to date, as you stated, the Springfield Union would be willing to advertise and sell that book as a Webster's Dictionary, is that correct?

MR. CARROLL: Objected to as not what witness stated.

A. We have already sold the dictionaries and covered the field, and we do not believe it could be covered twice. The average families want only one dictionary or could afford only one dictionary for the present generation.

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x Q. 219. You see no objection, either in law or morals to calling a dictionary "Webster's Dictionary" which is based upon and in fact is a reprint of an English Dictionary, is that correct?

MR. CARROLL: Objected to as irrelevant and immaterial.

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A. If the definitions are correct and it is brought up to date in every way.

x Q. 220. No matter who wrote it in England you are willing to call it an English Dictionary in this country? A. I won't go as far as that.

x Q. 221. I am trying to get at your idea of commercial morality. If you knew that this dictionary was based upon an English Dictionary, and that that statement which appears in your advertisement that it was based upon an unabridged Dictionary of Noah Webster was false, would you have been willing to have exploited it and advertised it as a Webster's Dictionary and used the prestige of the Springfield Union to circulate it in that name?

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John W. Nolan—Cross.

MR. CARROLL: I object as irrelevant and immaterial and on the further ground that the statements are to the knowledge of counsel for complainant false.

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A. Well, that is a pretty wide field you are trying to cover on the question, I think. I think I have made our position clear when I stated several times previously that the dictionary was represented to us as being brought up to date in every way, and any changes that may have occurred, any differences in the intervening years were made in the dictionary that we put on, and the best proof as I have stated before is the fact that the persons who bought the dictionary seem to be perfectly satisfied, and it is now nearly one year since the first dictionary was sold and we think that in all that time that in this community, that if the dictionary was not what it was represented to be we would have heard of it long and loud, before this.

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x Q. 222. Don't you know you haven't answered the question? What is your objection to being fair? A. I think I have covered your question in my answer in every possible way in fairness to you.

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x Q. 223. (To stenographer) Will you please read the question? Question read. A. I still am of the same opinion. I don't believe I can cover your question any more thoroughly than I have done.

x Q. 224. If the English dictionary assumed in the last question was a good dictionary and had been properly brought up to date, if I understand your answer correctly, you would be perfectly willing to sell it in this country as Webster's dictionary, although as a matter of fact it was not

based upon the unabridged dictionary of Noah Webster or any other Webster's dictionary? Is that correct? A. Yes, I think if the definitions contained in that dictionary you speak of were correct and up to date in every way and words of recent coinage etc. were to be found in a dictionary of that kind, that it would meet with a ready sale and the public would be satisfied, no matter whether it was sold under the name of Webster or if it was sold under some other name.

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x Q. 226. You think then that if one commercial house deals in goods widely known under a certain name, it is commercially honest to adopt that name for other goods if those other goods are of equal intrinsic merit.

MR. CARROLL: I object to that question as assuming one of the most important points at issue in this case, whether or not the goods of the complainant's are known as Webster's Dictionaries and whether or not other dictionaries are not known as Webster's.

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MR. HALE: This coaching form of objection is again objected to.

MR. CARROLL: It is no coaching as counsel for complainant knows. It is simply an attempt to correct misstatements of counsel for complainant. It is objected to further as irrelevant and immaterial.

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A. In this particular case.

x Q. 227. Please answer the question as asked, never mind "particular cases." A. I can only answer the question in my own way and as long as the dictionary is the subject of discussion I think we will have to refer to it as this particular

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John W. Nolan—Cross.

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case. As I was going to say, in this particular case, it is of course a well known fact that there are more than one publication of dictionaries under the name of "Webster," as I to my present knowledge know that Mr. Ogilvie has got a very large dictionary on the market which he sells as a "Webster's" and which some years ago he wanted to have us consider in connection with the Union as a premium. And I think the name of Webster in this present day does not have the significance that it had years ago.

MR. HALE: The effect of counsel's coaching is plainly apparent in the answer.

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WITNESS: The statement of the counsel for defendant has absolutely no bearing upon what I have had to say, as my answers are based entirely upon results obtained by us when using the dictionary.

x Q. 228. Is it your view then that the name "Webster's Dictionary" may be properly and honestly used upon any dictionary whatever without regard to whether it has any connection with the dictionaries of Noah Webster?

MR. CARROLL: Objected to as irrelevant and immaterial.

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A. It all depends, of course, in a way upon the size of the book, I suppose that even a pocket edition can be called Webster's Dictionary, and a person can go into any book store and for 10c, 15c or 25c can buy one, and if it is a person of any intelligence they know they are not going to get a Webster's Unabridged, and the same would apply to a dictionary that sold the same as we used a year ago for 98c.

x Q. 229. In this same advertisement of October 21, I find the statement "The fact remains that the book distributed by the Union was founded on Webster's Dictionary." Did you rely upon the Syndicate Company's statement as to the assurance of the truth of that statement? A. Yes.

x Q. 230. You did not make any personal investigation? A. No, didn't have time.

x Q. 231. If that statement were shown to be false and you had known that it was false at the time this advertisement was published and at the time you took up this campaign, would you have been willing to have gone forward with the campaign and have published this advertisement and to have circulated this book as a Webster's Dictionary? A. We might have gone forward and circulated it as a Webster's Dictionary, such being the title of it, but I hardly think we would have advertised it as being based upon Noah Webster's if we knew that such was not the case.

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x Q. 282. In this same advertisement I find a statement that the assertion of the Merriam Company that this book distributed by the Union "was not founded on the work of Noah Webster was found on investigation to be untrue." Did the Springfield Union make any investigation of that subject? A. No.

x Q. 283. Yet the Springfield Union expected the purchaser of its dictionaries to rely upon that statement, did they not? A. Yes, because we considered the Syndicate Company people honest.

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x Q. 284. Then you are willing to stand and fall on the Syndicate Publishing Company in this matter, is that correct? A. Based upon the success of the book we think we were justified in

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John W. Nolan—Cross.

accepting most of their statements, as we have yet to find any dissatisfied buyer of the dictionary.

x Q. 285. Did any of the purchasers, by letter or otherwise, refer to their long acquaintance with Webster's Dictionary? A. No, they simply took advantage of the offer, we supposed on account of the bargain price and also the fact that a number of them had seen the dictionary in the homes of their relatives and friends.

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x Q. 286. Were these commendatory letters called forth by requests therefor? A. They were voluntary.

x Q. 287. Did you not include a circular suggesting topics of comment in case they felt disposed to write? A. Yes, we did. I believe it is customary in most publications, especially when they are offered by newspapers.

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x Q. 288. And that literature was supplied to the Union by the Syndicate Publishing Company? A. Those circulars.

x Q. 289. Yes. A. Yes.

x Q. 290. Speaking of advertising customs, is the using of reading notices in connection with displayed advertisements usual on the part of a paper in advertising campaigns? A. It is with newspapers where they have some particular proposition they wish to push.

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x Q. 291. And how long has that custom been in operation? A. Ever since there have been any live men on newspapers.

x Q. 292. Which would be a good many years would it not? A. Yes, that is one scheme that newspapers usually reserve to themselves, if they have anything of the sort they wish to push, in connection with a displayed advertisement they will also use readers.

x Q. 293. In such advertising campaigns, you have spoken of the necessity of using a psychological price or a bargain price. I suppose it is equally necessary to convince the customer that the goods are a bargain at the price, is it not? A. Yes.

x Q. 294. And that they are not what might be termed in a slighting sense "bargain quality"? A. Yes it is so understood, and it is evident in the sale of the dictionary that the buyers are of the opinion that they got a bargain.

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x Q. 295. Did any of the dictionaries distributed by the Union contain the warning notice contained in the later advertising matter beginning "This dictionary has been revised," etc.? A. I believe they did, the later shipments.

x Q. 296. The earlier ones did not, however? A. No, it stated on the title page they were published by the Syndicate Publishing Company of New York.

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x Q. 297. You mean the name was in the ordinary publishers' imprint in the ordinary form? A. Yes, and if I remember rightly it seems as though the name was stamped on the back of some of the dictionaries, the early dictionaries that we sold.

x Q. 298. You mean the Syndicate Publishing Company? A. Yes.

x Q. 299. At the bottom of the book? A. Yes.

x Q. 300. Will you please produce and allow me to select from your collection some other specimen copies of the letters which you have received in regard to this dictionary? A. Why yes.

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x Q. 301. May I call at the office of the Union to-morrow and select additional sample copies to be annexed to your deposition?

7581

John W. Nolan—Cross.

MR. CARROLL: No.

x Q. 302. What does the witness say? A. I rely upon counsel; if he offers no objection I will allow you to.

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MR. CARROLL: Counsel may look over the files of letters and take what letters he wishes to offer in evidence if he so wishes but they cannot be attached to this witness's deposition.

x Q. 303. May I be permitted to inspect and take copies of selected letters from your file? A. Yes.

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x Q. 304. How much advertising in price did the Syndicate Publishing Company agree to take in connection with this dictionary proposition? A. I don't know as they agreed to take any particular price. In a talk I had with one of them I believe they told me the sales would be so large that they would pay for the cost of the advertising.

x Q. 305. You mean that the Union's portion of the receipts would pay for the advertising space occupied? A. Yes.

x Q. 306. And what was that proportion of the receipts or the amount of it? A. I cannot say.

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x Q. 307. Were the coupons paid for as advertising matter? A. I think not, no.

x Q. 308. Are you certain? A. I would not want to say for sure one way or the other, but I think not, we didn't consider them as part of the advertising; it was the displayed advertising that we used to feature the dictionary. We also relied upon the dictionary itself, the merits of it, after the people had bought it they showed it to their friends and relatives.

x Q. 309. I presume the reading notices and the coupons did not contain what has been termed the "warning" notice? A. After the date of October 21st I think that that matter was fully explained in the readers and also in the coupons.

x Q. 310. It was not explained in any of the reading notices you have produced in evidence? A. It was not?

x Q. 311. No. A. I can't say.

x Q. 312. You haven't produced any coupons here in evidence, have you? A. No.

x Q. 313. So you are not certain as to that? A. No, I am not certain as to that, but the displayed advertisement was what we used mostly to feature the proposition.

x Q. 314. Is your position such as you would necessarily know whether any one returned your books because they were dissatisfied or for any reason? A. Yes sir.

x Q. 315. Not a single book could be returned without your knowing of it? A. No sir.

x Q. 316. Is that correct? A. Every book that was returned was supposed to be reported to me and if there were any imperfect bindings they were reported to me.

x Q. 317. There were some instances of that sort? A. A few imperfect bindings.

x Q. 318. No case of a book being returned for any other reason? A. No, none that I know of, and I especially emphasized to the office help there that if there were any people who wished to return the book because they were dissatisfied with the contents I wanted to know it and none were reported.

x Q. 319. Did you at any time prior to October 21st explain to purchasers of your dictionary that

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John W. Nolan—Cross.

they were not published by the original purchaser of Webster's Dictionary? A. We had no occasion to.

x Q. 320. And you never did? A. The question was never brought up by any of the people who bought the dictionary.

x Q. 321. And you never explained it to them? A. No, did not consider it necessary, they seem to be satisfied.

7590

x Q. 322. Will you afford me an opportunity to inspect at the Union Office tomorrow morning the preliminary literature which you received bringing this dictionary proposition to your attention? A. You mean by that the literature previous to our taking it on?

x Q. 322. Yes. A. I don't believe I saved it, there was very little of it, just one or two communications and I think those were thrown away after we took it on.

7591

x Q. 323. Any correspondence on the subject? A. One or two letters from the Syndicate Company.

x Q. 324. Telling the merits of their scheme? A. Telling the merits of their scheme.

x Q. 325. May I inspect those letters? A. I considered those circular letters and treated them the same as advertising matter. We receive of course in newspaper offices a number of those letters, you might term them correspondence, but we consider them circular letters and if it is not anything we are interested in we throw them away just the same as if they were any advertisements.

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x Q. 326. Did any representative of the Syndicate Publishing Company come to Springfield and take any part in this dictionary campaign at any time? A. When we received notice that we were

supposed to be infringing upon the rights of the Merriam People we notified the Syndicate Publishing Company and one of their representatives came on here and talked the matter over and he told us they had absolutely no ground whatever.

x Q. 327. You were satisfied with that representation and went on with the campaign, is that correct? A. We went on with the campaign because we received no complaints from any persons who had bought them and we considered—

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x Q. 328. You went on with the campaign therefore? A. We considered that proof enough that the people who bought them were satisfied.

x Q. 329. And it was immaterial whether the Merriam Company was satisfied or not, is that correct? A. That was not considered. We didn't go into the dictionary with the idea of putting the Merriam Company out of business or anybody else, it was wholly with the idea of pushing a good thing as we saw it to get the good will of the people by giving them something they wanted at a bargain price.

7595

x Q. 330. And upon the assurance of the Syndicate Company that you had a legal right to continue to do what you had been doing you did continue to do it? A. We continued to sell the dictionary.

x Q. 331. Relying upon your assumed legal right to do so? A. Upon assurance from them that the book they were printing was within the law in every way and not infringing upon the publication of any other concern.

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x Q. 332. Did they guarantee you against loss in case of continuing the campaign?

MR. CARROLL: Objected to as irrelevant and immaterial.

7597

John W. Nolan—Re-Direct.

A. I believe Mr. Plummer conferred with him about that.

7598

x Q. 333. Have you since heard that a preliminary injunction has been granted in this case upon the ground that the Syndicate Book and advertisements were not in conformity with the legal rights of the several interested parties? A. Haven't heard there was an injunction, heard there was a suit instituted against the Syndicate Company.

x Q. 334. You never had heard there was an injunction? A. Didn't hear of any injunction, of course that was after we had wound up the dictionary proposition.

x Q. 335. And the Syndicate Company never notified you of the injunction? A. No interest to us as we were not using their dictionaries.

x Q. 336. That is all.

7599

RE-DIRECT EXAMINATION:

Q. 1. (By Mr. Carroll) Do you think the name "Webster" had much or anything to do with the sale of this dictionary?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for mere opinion of the witness.

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A. I really think from my experience in the Circulation department that if we had offered a limp leather binding of some dictionary with a name other than "Webster" on it, if the dictionary was thoroughly up to date in every way, and the binding good, and the paper of good quality, the type of a proper size and so on, that the book being offered at that price there would have been thousands of them sold just the same.

John W. Nolan—Re-Direct.

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Q. 2. You think then that if this dictionary had had upon its cover simply the words "Good Dictionary" and in every respect just exactly as it was you could have sold just as many books?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and as calling for mere opinion of the witness.

A. We could have put on the cover "The Union Dictionary" "The Springfield Union Dictionary, Thoroughly up to Date" and of course expanded along these lines that it was up to date and modern in every way, and I think we would have sold thousands of the dictionaries.

7602

Q. 4. Do you think there was any confusion with the so-called Webster's Dictionary published by the Merriams?

MR. HALE: Objected to as incompetent, irrelevant and immaterial and because numerous persons who have purchased these dictionaries from various newspapers including the Springfield Union have testified that they were so deceived.

7603

MR. CARROLL: Objected to as improper summary of the testimony.

MR. HALE: And further because it is obviously within the power of the defendants to call numerous purchasers of the dictionary to prove whether or not they were deceived.

7604

A. We think from our experience that there was no such confusion, simply the fact the Union was offering a dictionary at a bargain price of 98c and that the people were thoroughly satisfied in every way and never gave it any consideration

7605

John W. Nolan—Re-Cross.

whether it was published by the Merriam Company or some other concern.

Q. 5. Do you think the purchasers of the Webster's Dictionary you were selling cared anything at all about the publisher of the book?

MR. HALE: Same objection.

7606

A. No, I don't, because I think if they did we certainly would have had some of them return the books to us at the Union office.

Q. 6. Do newspapers as a rule permit their news columns to be used by advertising readers unless they are getting some practical benefit from following the scheme?

MR. HALE: Objected to as incompetent, irrelevant and immaterial.

A. No, they do not.

7607

Q. 7. What did you do if a book was returned with an imperfect binding? A. We gave them a new copy and also stated if they found any imperfection in that one we would gladly replace that.

Q. 8. Were many books returned for that reason? A. Very few.

That is all.

7608 RE-CROSS EXAMINATION:

x Q. 1. (Mr. Hale) Did you interview any of the residents of Springfield who made affidavit on behalf of the Merriam Company of this city? A. No, I did not.

x Q. 2. Do you know who did? A. Mr. Plummer took that matter up, I believe, I think there was somebody, I don't know who it was.

x Q. 3. You knew there was somebody who did interview these persons? A. Went around to see what the objections were and the substance of it was that they thought they had got "stuck" on the price, 98c. Of course, we stood ready to refund the money to them but none of them availed themselves of that offer and said they got more than their money's worth.

x Q. 5. Then did you hear of the fact that some people who purchased the dictionary from the Springfield Union claimed to have been deceived? A. After we heard of the suit instituted by the company and after the sale of the books was all off. That was simply on the affidavits that were made to the Merriam people, I believe, and I may add that I was told that these people were in a way led in their questions, in the way they were put to them, so that they could make up an affidavit favorable to the Merriam Company.

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MR. HALE: The answer of the witness beginning "I may add" is objected to as incompetent, irrelevant and immaterial and unresponsive and a motion is hereby made to strike it out.

x Q. 6. Who told you that? A. I don't remember the name now. I don't remember the individual, but I know that that was my impression and the impression became very deep seated after I heard who some of those people were who filed the affidavits.

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x Q. 7. You don't know that these same people were called as witnesses and examined and cross-examined by counsel for both parties?

MR. CARROLL: And if so you don't know the further fact on cross examination they

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Lauren Carroll—Direct.

practically admitted they didn't care who the publisher was.

MR. HALE: The statement is objected to as highly improper in a due and proper cross-examination.

A. I supposed they would be as long as they filed affidavits.

7614

(DEPOSITION CLOSED.)

(Signature of Witness Waived.)

Complainant's counsel inquires whether defendant intends to produce the book referred to by the Witness, Peck, as the "Bond Dictionary".

7615

Defendant sees no reason why this book should be produced by the defendant and states further that the book never was owned by the defendant and is no longer in the possession of the defendant and the defendant's counsel has not been able to ascertain its whereabouts.

LAUREN CARROLL, a witness called by and on behalf of the defendants, testified as follows:—

(Oath and Signature Expressly Waived by counsel for complainant.)

7616

MR. HALE: All objections upon all grounds, except as to oath and signature, shall be considered as taken and reserved to all parts of Mr. Carroll's testimony without being subsequently stated.

MR. CARROLL: On the 27th day of October, 1911, I wrote the following letter to Mr. Edward T. Roe.

1905

Lauren Carroll—Direct.

7617

"October 27th, 1911.

Mr. Edward T. Roe,
530 North Troy Street,
Chicago, Illinois.

DEAR SIR:—

Messrs. Stewart & Co., of Baltimore, Maryland, clients of ours, have been notified by G. & C. Merriam of Springfield, Massachusetts, publishers of a Webster's dictionary, that the title page of a dictionary which they were selling now known as "Webster's New Century Dictionary" is an infringement upon the rights of the Merriam Co., Messrs. Cupples & Leon, of this City, who are the publishers of the dictionary which was being sold by Stewart & Co., have had a talk with the editors of the Christian Herald, who originally published this dictionary under the name of "Crown Dictionary" and the dictionary, we understand from the Christian Herald, was compiled by you. The title page of the dictionary says that it is based upon the unabridged dictionary of Noah Webster, L.L.D., revised and brought up to date in accordance with the most recent eminent English and American authorities, by Edward T. Roe, L.L. B. The editors of the Christian Herald say that they have always understood that the title page correctly stated the facts, and that the book so compiled by you was based upon the unabridged Webster's dictionary. Will you be so good as to let us know if they are correct in their opinion. and if as a matter of fact in compiling this dictionary you did base it largely upon Webster's unabridged dictionary, the copyright of which has now expired. The Merriam Co. claim that the

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Lauren Carroll—Direct.

dictionary in question is not in any substantial degree whatsoever based on Webster's unabridged dictionary, and if the fact is contrary to this we would be very much obliged to have you so inform us.

We are,

Very truly yours,

(Sgd.) GOULD & WILKIE.

7622

MR. HALE: The letter and its contents are objected to as incompetent, irrelevant and immaterial as a transaction between counsel for defendant and a third person and in no way binding upon the complainant but a matter really *res inter alios*. The letter is also objected to as relating to the production of unsworn statements by Mr. Roe which is evidence in no sense against the complainant and because Mr. Roe himself is not called as a witness, sworn, examined and cross examined in accordance with the rules of legal proceedings.

7623

MR. CARROLL. (Deposition continued) I obtained the address to which this letter is addressed from the Christian Herald Company in New York and four days later I received in the regular course through the mail this letter addressed to my firm Gould & Wilkie, #2 Wall Street, and I offer that letter in evidence.

7624

MR. HALE: Objected to as incompetent, irrelevant and immaterial as not properly identified and as a mere written declaration of some unknown person who has not been called and sworn and examined as a witness in accordance with the rules governing the taking of testimony in equity and objection is made to spreading the same upon the records as a gross abuse of the

Lauren Carroll—Direct.

7625

method of taking proof before examiner and notice is given that motion will be made forthwith to strike out both this letter and the previous letter referred to by this witness.

Subject to this objection the letter is offered in evidence, received in evidence and is as follows:

"530 N. TROY STREET, CHICAGO,

OCTOBER 30, 1911.

7626

MESSRS. GOULD & WILKIE,
No. 2 Wall Street,
New York City.

GENTLEMEN: Replying to yours of the 27th, have to say that the statement on the title page of the dictionary which I sold to the Christian Herald, to the effect that it is "based on the unabridged dictionary of Noah Webster, L. L. D., revised and brought up to date," etc., is correct and a comparison of the book with the 1848 edition of Webster's unabridged dictionary will show that it is nearer in all essentials, including orthography, pronunciation and definitions, than are any of the so-called Webster's dictionaries now being published by the G. & C. Merriam Company or by its ally, the American Book Company.

7627

Very truly yours,
EDWARD T. ROE."

7628

MR. HALE: The motion to strike out said letter upon all the grounds stated is hereby renewed.

MR. CARROLL: (Deposition continued) After the motion for preliminary injunction was filed in this case and served upon counsel for defendant I sent

7629

Lauren Carroll—Direct.

to our correspondents in Chicago an affidavit embodying these facts requesting them to have Mr. Roe sign it so that it might be used upon the motion for preliminary injunction and they replied that they had seen Mr. Roe at his residence, 530 North Troy Street—

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MR. HALE: I object to a statement of the substance of the correspondence between this witness and his Chicago correspondents and especially as to the unsworn statements of the unknown correspondent as to what the uncalled witness, Roe, stated to him.

MR. CARROLL: (Deposition continued) And that he stated that the contents of the letter were true but that since writing it he had been approached by representatives of the Merriam Company and had promised them not to give any affidavit in the matter.

7631

MR. HALE: The entire deposition of this witness is objected to as wholly incompetent and immaterial and motion is made to strike it out and notice is here given that said motion will be brought up at a near and convenient time and in advance of the final hearing to suppress this deposition upon all of the grounds stated.

CROSS EXAMINATION by Mr. Hale:

7632

MR. HALE: Have you a copy of the affidavit which you sent to your Chicago correspondents for the purpose of being executed by Mr. Roe? A. I think I have.

MR. HALE: Will you supply me with a copy of it? A. If I have one I will.

MR. HALE: What is the name of your Chicago correspondent?

Lauren Carroll—CROSS.

7633

MR. CARROLL: Matz, Fisher & Boyden.

MR. HALE: Have you the letter which this correspondent sent to you referring to their interview with Mr. Roe? A. I think so, surely not here, but perhaps in the office.

MR. HALE: The motion to strike out this entire deposition is here renewed upon all the grounds stated in the objections.

DEPOSITION CLOSED.

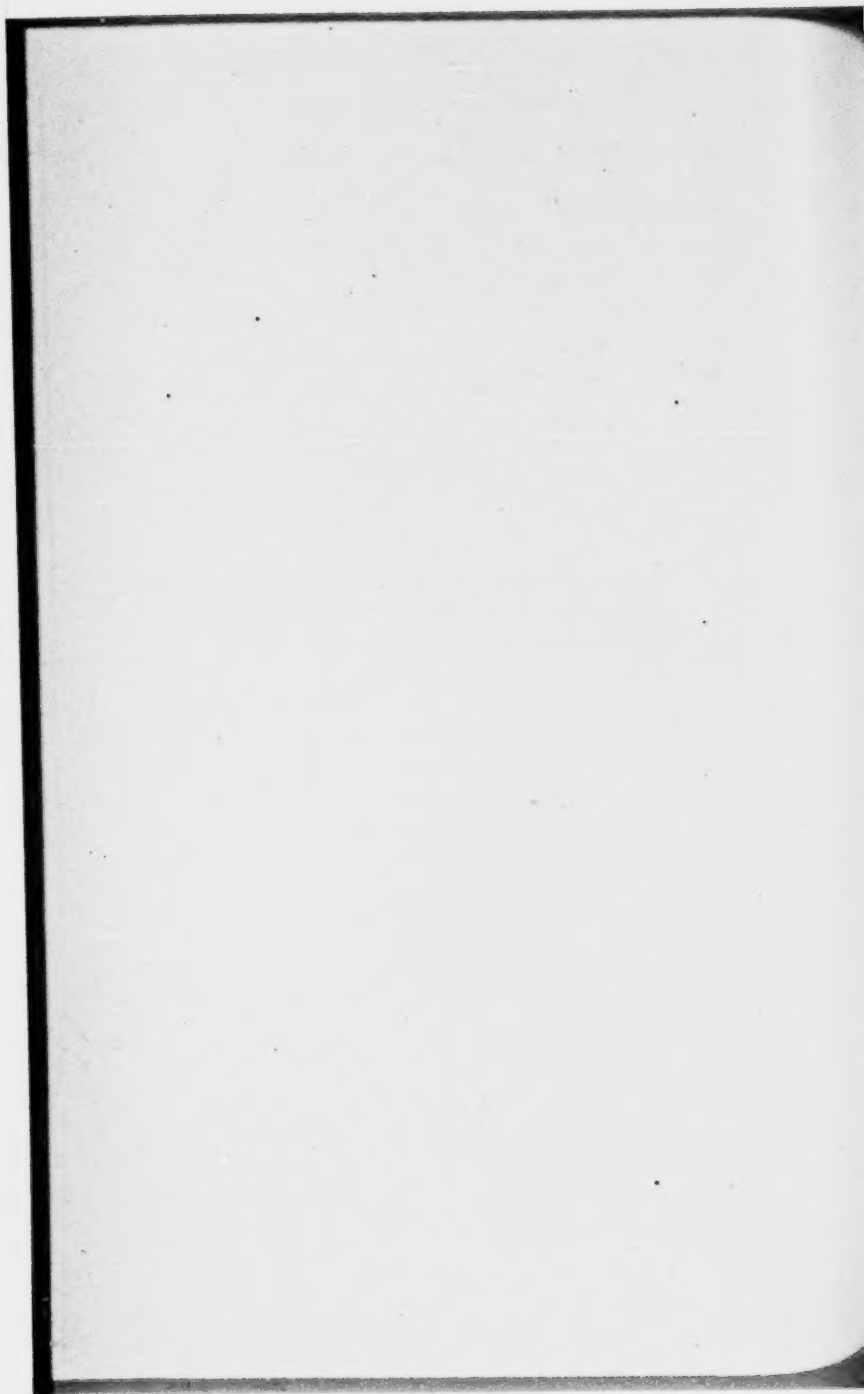
7634

Testimony on behalf of Defendants at Springfield, Mass., closed.

Notice of taking depositions and certificate of Special Examiner omitted from printed record by consent.

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At a Stated Term of the District Court
of the United States for the South-
ern District of New York, held at the
Court Room of said Court, in the
Borough of Manhattan, City of New
York, on the 30th day of September,
1912:

Present—HON. JULIUS M. MAYER, District Judge.

G. & C. MERRIAM COMPANY,
Complainant.

vs.

CUPPLES & LEON COMPANY,
Defendant.

Equity No.
8—161.

7642

G. & C. MERRIAM COMPANY,
Complainant.

vs.

SYNDICATE PUBLISHING COM-
PANY,
Defendant.

Equity No.
8—162.

7643

Upon reading and filing defendant's motion to
reopen the above-entitled cause and for leave to
give testimony in sur-rebuttal, and the affidavit
of Lauren Carroll, verified the 23rd day of Sep-
tember, 1912, and of Hugh A. Bayne, verified the
23rd day of September, 1912, in support of said
motion, and the affidavit of William B. Hale, veri-
fied the 26th day of September, 1912, filed in op-

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7645 position thereto, and after hearing counsel for the respective parties, it is hereby

ORDERED that this cause be and the same hereby is reopened, and the defendant granted thirty (30) days from the date of this order within which to take and introduce additional testimony and proofs, *provided*, and this order is upon the express condition, that said additional testimony and proofs shall be limited to testimony to rebut the testimony heretofore given by complainant's witness, C. O. Sylvester Mawson, and shall extend to no matters not touched upon by said witness Mawson, and *provided further* that this cause be and the same hereby is set peremptorily for final hearing upon the first court day for the hearing of equity cases in the month of November, 1912, with leave to complainant to have an adjournment thereof, to take further proofs in rebuttal of said new proofs of defendant, if it shall so elect. The time of complainant to be fixed on application to the court. Defendant shall not be entitled to have any adjournment of the hearing of this cause because of any fact arising out of the taking of its testimony under this order. In all other respects the motion herein is denied.

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JULIUS M. MAYER,
Judge, United States District Court,
Southern District of New York.

7648

DISTRICT COURT OF THE UNITED
STATES,

7649

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant.

against

CUPPLES & LEON COMPANY,
Defendant.

Equity
8—161.

7650

G. & C. MERRIAM COMPANY,
Complainant.

against

SYNDICATE PUBLISHING COM-
PANY,
Defendant.

Equity
8—162.

7651

TESTIMONY taken by and on behalf of the de-
fendants, pursuant to order of this Court, dated
September 30th, 1912, before JOHN A. SHIELDS,
Esq., a Standing Examiner of this Court, at the
offices of Messrs. Gould & Wilkie, 2 Wall Street,
New York City, beginning at two o'clock P. M.
on Monday, October 28th, 1912, pursuant to no-
tice hereto annexed.

7652

APPEARANCES:

For Defendant Cupples & Leon Company,
GOULD & WILKIE.

LAUREN CARROLL, Esq., of Counsel.

7653 *Prof. Harry Thurston Peck—Direct.*

For Defendant Syndicate Publishing Company,
STRONG & CADWALADER,
LAUREN CARROLL, Esq., of Counsel.

For Complainant,
WILLIAM B. HALE, Esq.

7654 IT IS HEREBY STIPULATED by and between
counsel for the respective parties that the
testimony of all witnesses, called pursuant
to the above mentioned order, shall be
taken down stenographically by a compet-
ent stenographer, appointed by the Stand-
ing Examiner, and subsequently tran-
scribed and reduced to writing for the use
of the Court.

IT IS FURTHER stipulated that the signa-
tures of all witnesses shall be waived.

7655

PROFESSOR HARRY THURSTON PECK, a witness re-
called for defendants in sur-rebuttal, having been
duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Did you ever hear of C. O. Sylvester Maw-
son before this suit? A. I think I had heard his
name once, but if so it was from reading a preface
7656 from the Webster's New International Dictionary.

Q. 2. How is he described in that preface?

MR. HALE: Objected to as calling for sec-
ondary evidence, and therefore incompet-
ent.

A. He is described—after mentioning the gen-
eral editors and principal editors of the New In-

Prof. Harry Thurston Peck—Direct.

7657

ternational, the editor in chief, Dr. Harris, says, "There has been connected with the work in a less formal way C. O. Sylvester Mawson, for many years a resident of India, who has furnished much information regarding the East Indian ways," and there is also mentioned one other gentleman who is also connected in a less formal way. Apart from that I have never heard of him.

Q. 3. Is he mentioned in any of the English books of reference?

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MR. HALE: Same objection.

A. Not so far as I have been able to discover.

Q. 4. In XQ23 of Mr. Mawson's testimony, he was asked if he had ever heard of Professor Mahn. He answered, "For the moment I cannot think him up." Who was Professor Mahn?

MR. HALE: Objected to as irrelevant and immaterial.

7659

A. Professor Mahn was Professor in Berlin, and did some revising as is stated in the preface to the New International Dictionary,—Webster's New International Dictionary. He did the revision in 1864, and quite a point is made of his connection with the work.

Q. 5. At cross question 31 the witness Mawson was asked: "Did you ever hear of Carl Verner?" and he answered "I have but I cannot recall very clearly." Who was Carl Verner?

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MR. HALE: Same objection.

A. Carl Verner was a Dane studying in Germany, and he published a work and a dissertation or monograph in Kuhn's Zeitschrift, which is

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Prof. Harry Thurston Peck—Direct.

nothing but Kuhn's Journal. He published a monograph, the principle of which upset and absolutely revolutionized all the old philology after that. Philology, instead of having been partly guess work, became almost an exact science. He is one of the greatest men in the history of philology, if I remember, during the last thirty-five years.

7662

Q. 6. Would any lexicographer worthy of the name know about Carl Verner?

MR. HALE: Objected to as incompetent, irrelevant, immaterial, as leading, and as calling for a conclusion; also as argumentative.

7663

A. He is universally recognized as one of the two greatest philologists of modern times, and any lexicographer, even though he were a specialist in some other language, as in the Indian languages, would know him, as surely as a lawyer, a trained lawyer, who was trained in the history of law, would know Blackstone or Kent.

Q. 7. In answer to cross question 33, the witness Mawson said, "I only claim to be a specialist on Oriental terms." Would a specialist on Oriental terms know about Rask?

7664

MR. HALE: Same objection, and as calling for a conclusion.

A. He certainly would, if he knew his subject historically; that is, if he knew the Indian terms as a colonial.

Q. 8. Who was Rask? A. Rastus Rask was a Norwegian, who at the end of the eighteenth century, made extensive expeditions and travels and studies in Persia and Asia, the western part

Prof. Harry Thurston Peck—Direct.

7665

of Asia. He was the first to discover—he was the first who brought to Europe any knowledge of the old Persians. From his explorations and publications came the famous Grimme's law, which Mr. Mawson mentioned in the testimony. I was going to say that Dr. Rask was the pioneer of modern philology.

MR. HALE: The question is further objected to as not in rebuttal, because it does not appear from the records that Mr. Mawson was asked about Dr. Rask, concerning whom this witness has testified, the records showing that Mr. Carroll asked the witness Mawson about a man named Raskin.

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Q. 9. The witness Mawson, in answer to cross question 60, said, "We do not use the term 'Websterian' in connection with our dictionaries. To me the word has no special significance." Is that true? A. It is used three times in the preface in the New International Dictionary; twice it says the "Websterian Tradition", and once, "The Websterian System."

7667

Q. 10. In his direct examination, the witness Mawson, in questions 84 to 87, gives a list of so-called two word phrases which appear in defendant's dictionaries designated as nouns. He states that "This is not Websterian." Have you found any examples of two word phrases designated as nouns in the Webster 1847 dictionary?

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MR. HALE: Objected to as incorrectly reciting the testimony of the witness Mawson, he having used no such phrase in that connection, and counsel is requested to please point it out.

7669

Prof. Harry Thurston Peck—Direct.

A. I found, without any effort at all, merely searching through the book, a good many unhyphenated two word phrases which were characterized as nouns, and so entered, and some—a great number that were so entered and not characterized at all. There seemed to be no system. For example—

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MR. HALE: The answer is objected to as not responsive, and also as secondary, because it purports to recite the contents of certain books, instead of pointing it out. The question was a direct question, and could and should have been **answered** or no.

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A. (Continued) The list, or a partial list is, for example: "Star fish", marked as a noun without a hyphen. "Arsenic acid", no hyphen, but marked as a noun. "Arsenious acid", no hyphen, marked as a noun. "Bas Bleu", a French word—French phrase, no hyphen, but marked as a noun. "Jerusalem Artichoke", no hyphen, marked as a noun. "John Bull", no hyphen, but marked as a noun. "John Tory", no hyphen, marked as a noun. "Naphthalic acid", no hyphen, marked as a noun. "Naval officer", marked as a noun, no hyphen. "Neat's foot oil" three words, noun,—that is a three word phrase, marked as a noun,

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and no hyphens at all. "Paixhan Gun", no hyphen, marked as a noun. "Pandean pipes", no hyphen, and marked as a noun. "Parish clock", no hyphen, marked as a noun. "Privy Chamber", no hyphen, marked as a noun. "Privy Council", no hyphen, marked as a noun. "Prong hoe", no hyphen, marked as a noun. "Manilla hemp" is

Prof. Harry Thurston Peck—Direct.

7673

another one. Well, there are a few words, for instance, "St. Anthony's fire".

Q. 11. Is this a complete list? A. Why, it is not a complete list made from an examination of the whole dictionary.

Q. 12. Are there any other interesting examples before you?

MR. HALE: Objected to unless the witness will point out himself in the printed book, and not answer generally as to contents of books, not produced.

7674

A. Why, I would be very glad to do it. Yes, in some cases, in Latin two-word phrases so-called, there were a great many marked as nouns without any hyphens, and a great many others that were hyphenated. It is also interesting to me that three-word phrases, as "St. Anthony's fire", no hyphen, but a noun. "St. John's bread", marked as a noun. "St. John's Wort" no hyphen, marked as a noun. And then it seemed to me strange that "Stabat Mater" no hyphen, but marked as a noun—the inconsistency of having "Stabat Mater" so put down, but "Alma Mater" which is a very common thing—all these are in the 1847 Webster—and "Alma Mater" is not so marked, not hyphenated, and not marked as anything. There are a good many more, but that is a peculiarity that runs through the 1847 Webster.

7675

Q. 13. At question 91 of the witness Mawson's direct testimony he offers a list of seventy-five words, which he states are given in defendant's dictionary in what he designates as the English form as opposed to what he designates as the accepted American form. In answer to cross ques-

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Prof. Harry Thurston Peck—Direct.

tion 37 he amplifies the meaning of this distinction, and says: "The authorities I depend upon are the English dictionaries referred to in Complainant's parallel exhibit, and by English forms of spelling I mean the forms which are commonly used by such dictionaries as distinguished from the forms which are approved, and are now generally adopted by the best American dictionaries." In cross question 43 he says, "Unless I find the same spelling in Webster's New International Dictionary, Funk & Wagnall's Standard Dictionary, and in the Century Dictionary, I would not use the term 'American spelling', unless it was common." In answer to cross question 46, he said, "It will be found that the form adopted and accepted by Webster is the one approved of by the other two dictionaries, especially in the Standard Dictionary, which is ultra-American in its spelling."

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MR. HALE: It is objected to that counsel has not fully quoted the entire answer to cross question 46, and the real meaning of the words quoted is therefore not apparent.

MR. CARROLL: An inspection of the answer will show that sufficient has been given to plainly show the real meaning.

7680

(Question continued) Have you prepared a fuller list of these seventy-five words showing exactly how they are spelled in the Webster 1847, in Defendant's books, in Worcester's, Funk & Wagnall's Standard and the Century Dictionary?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, because it is immaterial whether or not the defendants'

Prof. Harry Thurston Peck—Direct.

7681

spelling conforms to the Worcester, the Century or various other dictionaries, the issue being as to whether or not it conforms to Webster's dictionary of 1847.

MR. CARROLL: The list is offered in rebuttal of Mr. Mawson's testimony in which he emphasized particularly his contention that the defendants' book was proved to be a book of English origin, by means of the spellings included in his list. The purpose of this counter-list is to show that in the majority of the cases cited by the witness Mawson, the spelling given in defendants' book is not only the approved English spelling, but also that preferred by all American dictionaries, except the Webster 1847, and that therefore it was not only right but necessary that the editor of defendants' book in revising and bringing it up to date should change the spelling to conform to the approved form in all English speaking countries.

7682

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MR. HALE: It is suggested that pointing out departures from the Webster 1847 edition upon which alone defendants based its right to call its dictionary "Webster" is in no way any rebuttal of Mr. Mawson's testimony, that defendant's book did not follow the 1847 edition.

MR. CARROLL: How strictly in rebuttal this testimony is will appear from the passages quoted from Mr. Mawson's testimony.

7684

A. I have prepared such a list, and it is as follows:

Prof. Harry Thurston Peck—Direct.

ORTHOGRAPHY.

SPELLING ADOPTED BY WEBSTER'S NEW ILLUSTRATED DICTIONARY COMPARED WITH THAT OF WEBSTER'S NEW UNABRIDGED, 1847. ALSO COMPARED WITH THE RECOGNIZED AMERICAN AUTHORITIES, THE STANDARD DICTIONARY, THE CENTURY AND WORCESTER.

Forms in Defendants' Books: *Forms in 1847 Webster's alleged*
Defendants' dictionary here re- by Complainant's witness
 7686 *ferred to simply as "Illus. Mawson to be the recognized*
trated." *and accepted American form:*

ABETTER

ABETTOR

"Illustrated": "abetter or abet- Webster 1847 gives only the form
 tor." "abettor."

Preferred by Worcester in which (A hybrid form,—a Latin termi-
 "abettor" is allowed only as a nation on an Anglo-Saxon
 law term. base.)

Preferred by the Century Dic-
 tionary.

7687 Allowed by the Standard Dic-
 tionary.

ACCOUTRE

ACCOUTER

The only form allowed by Wor- Webster 1847 gives
 cester. "accouter"

Preferred by the Century Dic- accoutre }

Allowed by the Standard Dic-
 tionary.

The proper French form.

ACCOUTREMENTS

ACCOUTERMENTS

The only form in Worcester.

Preferred by the Century Dic-
 tionary.

Allowed by the Standard Dic-
 tionary.

The proper French form.

Webster 1847 gives

The spell-
 ing "accou-
 terments" changes the
 "accouterments" pronunciation
 accoutrements } of this word
 to a rustic
 one.

Prof. Harry Thurston Peck—Direct.

7689

ADZE

ADZ

"Illustrated": "adze or adz."

The only form in Worcester.

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

AIDE-DE-CAMP

AID-DE-CAMP

7690

The only form in Worcester.

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

The proper French form.

Webster gives this word the French pronunciation while altering the French form. In this he stands inconsistent and alone.

APPAL

APPALL

Preferred by Worcester.

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

Inconsistent with Webster's claim to prefer always the simpler form.

7691

AXE

AX

"Illustrated": "axe, or ax."

The only form in Worcester.

Preferred by the Standard Dictionary.

Allowed by the Century Dictionary.

BANIAN

BANYAN

7692

"Illustrated": "banian or ban-yan."

Preferred by Worcester.

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

Webster 1847 also gives and separately defines the form "banian."

Prof. Harry Thurston Peck—Direct.

7693

BOULDER

BOWLDER

Preferred by Worcester.
Preferred by the Century Dic-
tionary.
Preferred by the Standard Dic-
tionary.

Webster 1847 gives "boulder, see
bowllder."

BRAZIER

BRASIER

7694 Preferred by Worcester.
Preferred by the Century Dic-
tionary.
Preferred by the Standard Dic-
tionary.

Webster 1847 gives "brazier, see
brasier."

CAULDRON

CALDRON

"Illustrated": "cauldron, see
cauldron."

Permitted by the Century Dic-
tionary.

7695 Standard Dictionary says "same
as caldron."

CARBURETTED

CARBURETED

The only form in Worcester.
Permitted by the Century Dic-
tionary.

CORNELIAN

CARNELIAN

7696 "Illustrated": "Cornelian, also Webster 1847 gives "cornelian,
carnelian."
Preferred by Worcester.
Standard Dictionary says "same
as carnelian."

Prof. Harry Thurston Peck—Direct.

CHARTOGRAPHER

CARTOGRAPHER

Illustrated: "Cartographer, cartographic, etc., see chartographer, etc." Etymologically incorrect.

Preferred by the Century Dictionary.

Etymologically correct.

CHEQUE

CHECK

In the "Illustrated" the form Webster 1847 gives "cheque" is defined and synonym "check" given. "Check" also given and defined as "draft," etc.

Allowed by Worcester.

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

COTILLION

COTILLON

"Illustrated": cotillion, also cotillon." Webster 1847 gives "cotillon }

Preferred by Webster's New International Dictionary (1909). cotillon}"

Preferred by the Century Dictionary. See preface to Webster's New International Dictionary, under Orthography, where form

Preferred by the Standard Dictionary. "cotillon" rejected.

COULTER

COLTER

Allowed by Worcester.

Allowed by the Standard Dictionary, which defines it under its own heading.

Webster 1847 gives "coulter, see colter."

7701

Prof. Harry Thurston Peck—Direct.

COUNCILLOR

COUNCILOR

The only form in Worcester.
Allowed by the Century Dictionary.

CYCLOPAEDIA

CYCLOPEDIA

7702

"Illustrated": "Cyclopaedia or Webster 1847 gives
cyclopaedia." "cyclopaedia }

The only form in Worcester.
Allowed by the Century Dictionary.
Standard Dictionary says "same
as cyclopedia."

cyclopedia }"

DEFLOWER

DEFLOUR

Preferred by the Century Dictionary. Etymologically incorrect.

Preferred by the Standard Dictionary.

7703

Etymologically correct.

DETECTOR

DETECTOR

Worcester defines under this Etymologically incorrect.
form.

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

Etymologically correct.

7704

DIARRHOEA

DIARRHEA

The only form in Worcester.
Allowed by the Standard Dictionary.

Prof. Harry Thurston Peck—Direct.

7705

DESPATCH

DISPATCH

“Illustrated”: “despatch or dispatch”; “dispatch, same as despatch.”

Webster 1847 gives “despatch, see dispatch.”

Preferred by Worcester.

Etymologically incorrect as shown by Webster 1847 in discussing its origin and original meaning.

Preferred by the Standard Dictionary.

Etymologically correct.

(Fr. dépêche.)

Approved by Century Dictionary.

7706

DISTIL

DISTILL

The only form in Worcester.
Preferred by the Century Dictionary.

The less simple form.

Preferred by the Standard Dictionary.

The simpler form.

DOLOUR

DOLOR

7707

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

DULNESS

DULLNESS

The only form in Worcester.
Preferred by the Standard Dictionary.

The less simple form.

The simpler form.

7708

ENCYCLOPAEDIA

ENCYCLOPEDIA

“Illustrated”: “Encyclopaedia or encyclopedia.”

Webster 1847 gives

The only form in Worcester.

“encyclopedia }
encyclopaedia”

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

7709

*Prof. Harry Thurston Peck—Direct.***FAECAL****FECAL**

"Illustrated": "fecal, same as Webster 1847 gives "faecal, see faecal."

Worcester gives cross reference to "fecal." Webster also gives and separately defines "faeces" with no cross reference to "feces."

Allowed by the Century Dictionary.

Standard Dictionary says "same as fecal."

7710

FOETAL**FETAL**

"Illustrated": "fetal same as foetal."

Standard Dictionary says "same as fetal."

FOETUS.**FETUS.**

"Illustrated": "fetus, same as Webster 1847 gives "foetus, see fetus."

Allowed by Worcester.

Standard Dictionary says "same as fetus."

Webster 1847 gives "foetus, see fetus." It also gives and defines "foeticide." Form "feticide" not given at all.

7711

GAVOTTE.**GAVOT.**

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

The correct French form.

Webster 1847 gives "gavot (Fr. gavotte)."

GAIETY.**GAYETY.**

Approved by Worcester.

Preferred by the Standard Dictionary.

Webster 1847 gives "gaiety, see gayety."

7712

GAILY.**GAYLY.**

Allowed by Worcester.

Preferred by the Standard Dictionary.

Webster 1847 gives "gaily, from gay and better written 'gayly,' " then gives full definition.

Prof. Harry Thurston Peck—Direct.

7713

GELATINE

GELATIN

“Illustrated”: “gelatine, also gelatin.”

The only form in Worcester.

Allowed by the Standard Dictionary.

GLYCERINE

GLYCERIN

“Illustrated”: “glycerine, also glycerin.”

The only form in Worcester.

Allowed by the Standard Dictionary.

7714

GRAMME

GRAM

“Illustrated”: “gramme, also gram,” “gram, see gramme.” Webster 1847 gives

Allowed by the Standard Dictionary.

The correct French form.

“gram }
gramme}” It also gives
“gramme, see gram.” “It
would be desirable to have this
word ‘gram’ Anglicized.”

7715

GUERILLA

GUERRILLA

The only form found in Worcester.

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

EMBITTER

IMBITTER

7716

“Illustrated”: “embitter, also imbitter.”

Approved by Worcester.

Preferred by the Standard Dictionary.

7717

Prof. Harry Thurston Peck—Direct.

EMBOSOM

IMBOSOM

Approved by Worcester.
Preferred by the Standard Dictionary.

ENCASE

INCASE

“Illustrated”: “incase, same as Webster 1847 gives “encase, see encase.”

7718

Approved by Worcester.
Approved by the Standard Dictionary.

ENSNARE

INSNARE

Approved by Worcester.
Preferred by the Standard Dictionary.

Webster 1847 gives “ensnare, see insnare.”

INSTIL

INSTILL

7719

The only form in Worcester.
Preferred by the Century Dictionary.
The simpler form.

The less simple form.

ENTHRALL

INTHRALL

Approved by Worcester.
Allowed by the Standard Dictionary.
Preferred by the Century Dictionary.

Webster 1847 gives “enthrall v. t. to enslave (see inthrall).”

7720

ENWRAP

INWRAP

Approved by Worcester.
Approved by the Standard Dictionary.
Approved by the Century Dictionary.

Webster 1847 gives “enwrap v. t. to envelop (see inwrap).”

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7721

JOUST

JUST

Standard Dictionary says "same as just." Webster 1847 gives "Joust, see just."

Approved by Century Dictionary. Etymologically incorrect and phonetically misleading.

The correct French form.

KILOGRAMME

KILOGRAM

Allowed by the Century Dictionary. Webster 1847 gives "kilogram }

Allowed by the Standard Dictionary. kilogramme}"

The correct French form.

7722

LEDGER-LINE

LEGER-LINE

The only form in Worcester.

Webster 1847 gives "ledger-line, see leger-line."

MAUGRE

MAUGER

The only form in Worcester.

The only form in the Century Dictionary. Webster 1847 gives "mauger }

Approved by the Standard Dictionary. maugre}"

7723

MULLEIN

MULLEN

The only form in Worcester.

The form used by Prof. Asa Gray (botanist). Webster 1847 gives "mullen }

Approved by the Standard Dictionary. mullein}"

Allowed by the Century Dictionary.

7724

7725

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OCHRE

OCHER

The only form in Worcester.
 Approved by the Standard Dictionary.
 Approved by the Century Dictionary.

Webster 1847 gives
 "ocher}
 ochre{"

OYES

OYEZ

7726

"Illustrated": "oyes, also
 oyez."
 Preferred by Worcester.
 Preferred by the Standard Dictionary.
 Preferred by the Century Dictionary.

PAEDOBAPTISM

PEDOBAPTISM

7727

"Illustrated": "paedobaptism,
 also pedobaptism." "Pedobaptism,
 same as paedobaptism."
 Approved by Standard Dictionary.
 Allowed by the Century Dictionary.

PHOSPHURETTED

PHOSPHURETED

The only form in Worcester.
 Allowed by the Century Dictionary.
 Allowed by the Standard Dictionary.

7728

PURR

PUR

Preferred by the Century Dictionary.
 Preferred by the Standard Dictionary.
 Approved by Worcester.

Webster 1847 gives "Purr v. i.
 to murmur as a cat (see pur)."

Form "pur" never seen in books
 or periodicals.

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7729

REINFORCE

REENFORCE

Preferred by the Century Dictionary.
 Approved by the Standard Dictionary.

Webster 1847 gives "reinforce, see re-enforce." "re-inforce-ment, see re-enforcement."

REYNARD

RENARD

"Illustrated": "reynard, n. the fox"; "renard, another form of reynard."

Webster 1847 defines "renard," then says, "this word is also spelled 'reynard.'" It also gives and separately defines the form "reynard."

7730

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

RENCONTRE

RENCOUNTER

"Illustrated": "rencontre, also rencounter."
 Allowed by the Century Dictionary.

Webster 1847 gives "rencounter (Fr. rencontre)."

7731

Preferred by the Standard Dictionary.

Allowed by Worcester.

Correct French form.

ROUBLE

RUBLE

Allowed by the Century Dictionary.

Webster 1847 gives "rouble, see ruble."

SARSENET

SARCENET

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

7732

7733

Prof. Harry Thurston Peck—Direct.

SAVANNAH

SAVANNA

"Illustrated": "Savannah, also Savanna."

Allowed by the Century Dictionary.

Allowed by the Standard Dictionary.

7734

SCATHE

SCATH

Approved by Worcester.
Preferred by the Century Dictionary.
Preferred by the Standard Dictionary.

The Century Dictionary says of this form "scath," an erroneous spelling of "scathe."

SILLIBUB

SILLABUB

7735

"Illustrated": "sillibub, also sillabub; syllabub."

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

Worcester has "syllabub."

SYLVAN

SILVAN

7736

Preferred by Worcester.
Approved by the Standard Dictionary.

Preferred by the Century Dictionary.

Webster 1847 says of "silvan": "It is also written sylvan." It also gives and separately defines "sylvan." It also spells the word "sylvan" in its definition of "woody."

SYRUP

SIRUP

Approved by Worcester.
Approved by the Standard Dictionary.

Preferred by the Century Dictionary.

Webster 1847 gives "syrup, see sirup."

Prof. Harry Thurston Peck—Direct.

773

SKILFUL

SKILLFUL

<p>The only form in Worcester. The preferred form in the Century Dictionary. The preferred form in the Standard Dictionary. The simpler form.</p>	<p>The less simple form.</p>
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SUBPOENA

SUBPENA

7738

<p>The only form in Worcester. Preferred by the Standard Dictionary. Preferred by the Century Dictionary.</p>	<p>Webster 1847 gives "subpena } subpoena }</p>
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SULPHURETTED

SULPHURETED

7739

The only form in Worcester.
Allowed by the Century Dictionary.
Allowed by the Standard Dictionary.

TAILAGE

TALLAGE

<p>"Illustrated": "tailage, also tallage." Preferred by Worcester. Preferred by the Century Dictionary. Approved by the Standard Dictionary.</p>	<p>Webster 1847 gives "tailage } talliage }" with a very short definition. It also gives "tallage } talliage }" with a longer and more elaborate definition— and no cross-reference.</p>
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7740

TITBIT

TIDBIT

<p>Preferred by Worcester. Preferred by the Century Dictionary. Preferred by the Standard Dictionary.</p>	<p>In Webster 1847 the form "tit-bit" is separately given and defined.</p>
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7741

Prof. Harry Thurston Peck—Direct.

WILFUL

WILLFUL

The only form in Worcester.

The less simple form.

Preferred by the Century Dictionary.

Preferred by the Standard Dictionary.

The simpler form.

7742

WOFUL

WOEFUL

“Illustrated”: “woful, also woeful.”

Webster 1847 gives

“woeful

The only form in Worcester.

woful }”; the less simple form.

Preferred by the Standard Dictionary.

Approved by the Century Dictionary.

The simpler form.

WOFULLY

WOEFULLY

7743

The only form in Worcester.

Webster 1847 gives

Preferred by the Standard Dictionary.

“woefully }
wofully }”

Approved by the Century Dictionary.

The less simple form.

The simpler form.

ZAFFRE

ZAFFER

“Illustrated”: “zaffre, also zaffer.”

7744

Preferred by Worcester.

Approved by the Century Dictionary.

Approved by the Standard Dictionary.

Prof. Harry Thurston Peck—Direct.

7745

May I correct that error in Mr. Carroll's statement, an error which came from Mr. Mawson's testimony? Mr. Mawson professed to present a list of seventy-five words in which the New Webster or rather say the Webster's New Illustrated had retained the so-called English or British spelling. Mr. Mawson's count in that list was incorrect. There were seventy-four words instead of seventy-five.

Q. 14. I notice that you have characterized the form "Abettor" as a hybrid form, a Latin termination on an Anglo-Saxon base. What do you mean by that? A. I mean—well, take the usual legal form "Aider and Abettor." Now, "aider" has the form which is usually added, the suffix added to the English word, instead of "aidor". Now, in "abettor", abett is the Saxon. That is English, pure English, and they have given it in the Webster 1847 as "abettor", which is a Latin ending, a common error.

7746

7747

Q. 15. In this list appear the following words: Accoutre, accoutrements, aide-de-camp, gavotte, gramme, joust, kilogramme, rencontre, which you have characterized as "the proper French form." What do you mean by that? A. I mean that the spelling is the spelling of the French, and the words are pure French. Webster gives the pronunciation as French, in French fashion. For instance, he does not give for aide-de-camp, "aide-de-camp," but "aide-de-kong," and therefore he should have made his spelling consistent with his pronunciation. And it is so with the others, and any editor has the right in a case of a French word, if it is stated in the preface as in the New International Dictionary, to use his own judgment as to whether a foreign word has become thor-

7748

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Prof. Harry Thurston Peck—Direct.

oughly naturalized or not. A great many French words are in use, and some of them have taken on English pronunciation, and English spelling, while others have not. Those that have been read here are on the broader line.

7750

Q. 16. The following words appear in this list spelled in defendants' dictionary in the following way: Appal, distil, instil, skilful, wilful, woful, wofully. You have noted under these forms that they are a more simple form than that given in Webster's. Why do you make this distinction, and what bearing has it on the case?

MR. HALE: Objected to as irrelevant and immaterial.

7751

A. Webster says that the first principle of his orthography is that he should have the simpler form; where he neglects to make the form simple or rather to adopt a form that is in use that is simpler than the one he puts down, he is inconsistent. The New Illustrated Dictionary is following out Webster's theoretical view when it spells words like "skillful" and "woeful" and "willful" and so forth with one "l" in the middle and "woful" and "wofully" without the "e" by saving a letter in each case, in each of the cases, or rather in each of the words that were read by Mr. Carroll.

7752

Q. 17. The following words are given in the following form by Webster's New Illustrated: "Chartographer, deflower, detector." You have designated these forms as etymologically correct, and the Webster form as etymologically incorrect. Will you kindly explain briefly the etymology of each of these words?

Prof. Harry Thurston Peck—Direct.

7753

MR. HALE: Objected to as irrelevant and immaterial.

A. The first, chartographer,—that is derived not as Webster supposed from the Latin, but from the Greek, that is, “c h” and not plain “c” plus the Greek “graph”; therefore Webster’s New Illustrated is in accordance with the proper etymology, because it comes out of the Greek and not out of the Latin.

7754

Deflower: As to that, etymology is rather the usage of all persons. I have never seen it spelled “flour” but “flower.” It is to “de”—that is from or away from; “flour” which is properly “flower”—that is really as much a matter of usage as it is of etymology.

Detector: That as Webster has it is spelled “detector,” which is under the same head as “abettor,” and is a bastard—or it is a hybrid word, because “detect”—that part of it is Latin, and the “or” is a Latin ending. Webster has taken a Latin first, and added to it an English ending, “er”, and which is just opposite to that in abetter “abettor.”

7755

Q. 18. Mr. Mawson stated in answer to question 115, that the seventy-four or seventy-five words given by him constituted forty percent of all the words which have a possible two spellings, one English and one American. What is the total number of words in the English language with two spellings, one English and one American?

7756

MR. HALE: Objected to as being a wholly incorrect statement of what Mr. Mawson testified to.

7757

Prof. Harry Thurston Peck—Direct.

7758

A. Why, according to Webster's International—not new International, but the International, the words that may be spelled in two different ways, or even three different ways number 2,996, and really more than that, because he omits those which it is understood that he differs about; that is, those in “our” words given “or”, and the double “l” as in such words as “traveler” and several others; “er” instead of “re” for words as “saber” and “meter” and so forth. I do not vouch for the accuracy of that. I do not give it as my opinion. I say that is stated in Webster's International.

7759

MR. HALE: The answer of the witness is objected to as incompetent, being a mere quotation from a printed book as to which the witness has disclaimed any knowledge, and a motion is made to strike it out as not evidence.

Q. 19. At question 116 the witness Mawson pointed out some mistakes in the defendants' book. Did you find in the Webster 1847 any instances which might be said to sanction the inclusion of mistakes in dictionaries? A. I did.

7760

Q. 20. Can you give some, please? A. They are of a varied character. For example, under the head of “aeolian harp”— in the first place he spells it in two different ways. Now, aeolian harp is spelled “aeolian harp.” He gives it there, and refers—cross reference—see “eolian harp.” There is no such title in the book as “eolian harp.” That would be one instance. They are of all sorts, and came to me as I was going through the book without that particular purpose in view. Then I am going to read to you a list of certain errors that

Prof. Harry Thurston Peck—Direct.

7761

are not easily classified that I found in Webster's dictionary of 1847. The list is as follows:

"MISCELLANEOUS ERRORS

in Webster's dictionary of 1847, which do not fall under any other general category.

ABNORMITY is out of place, preceding ABNORMAL. ACQUISITIVE is defined, but described as "improper."

7762

AMIDSHIPS is defined but its part of speech not given.

BANK-BOOK is entered out of place, preceding BANK-BILL.

CALENDS cited by Webster along with CALENDAE as representing proper Latin forms.

DEAR is defined as HATEFUL.

DESS a form given by Webster as equivalent to DESK.

DRANK defined as "a term for wild oats."

7763

LACK is given as a spelling for the East Indian LAC.

LAMA is incorrectly defined as "the god of the Asiatic Tartars."

PALEOZOIC a word that is given without any definition.

RANG "nearly obsolete," according to Webster.

VANILLA a word noted as an adjective but defined as a noun.

WIERD "not in use," according to Webster.

7764

WITTICISM characterized by Webster as "an archaic word."

YEAR, in defining this word, Webster makes the sun move around the earth.

ZINCODE is defined by Webster as "the positive pole of a galvanic battery."

7765

Prof. Harry Thurston Peck—Direct.

These do not fall under any particular head. They are mistakes of different sorts, either where the definition is omitted in a word, or a cross reference is wrong, and where a word is out of place, or where they are obviously absurd.

Q. 21. What is the mistake in the definition of the word "zincode?" A. Oh, it says the positive pole. It should be the negative pole.

7766

Q. 22. At question 118 the witness Mawson gave an example of what he designated as definitions in defendants' books with a British character. Did you find any instances in the Webster 1847 of similar definitions of a British character?

7767

MR. HALE: This question, and this whole line of questions, is objected to as incompetent, irrelevant and immaterial, as not in rebuttal of anything testified to by Mr. Mawson, and it is stipulated that this objection may apply to all questions upon this line without being specifically renewed to each question.

7768

A. I find, a very large number of definitions, in the first place, of titles that were British rather than American; under them I found that as a rule Webster 1847, or at least the Webster book of 1847 treats largely the British phases of almost everything under this head, sometimes not mentioning this country at all, giving definitions fully that relate to feudal years and usages that cannot possibly prevail in this country, and never did, and yet says nothing to show that he is defining a British word, or that he has in mind a British usage. He uses such expressions, for example, a sack, 36 stone. Now, Americans do not

Prof. Harry Thurston Peck—Direct.

7769

express their weights in stones, and this is another instance of Briticisms that come out in all sorts of ways. Jail—he spells it the British “gaol.” He spells it “silvan;” that is to say, he gives the title “silvan” which is one of one of his own variety of spellings, in the title, and defines it there, but when he comes to use the word “sylvan” in other titles, as for example, the title “woody” he spells the word “sylvan” which is British. In such words as admiral, navy, fleet,—I take these as particular notice of that—navy and fleet. In admiral—there the article is almost entirely British. For example, under the word “admiral” he begins with the “Lord High Admiral in England, Great Britain.” We at that time had no admirals in our navy, but it is strange that he did not even negatively state that fact. It is an entirely British article. Take for example such a word as “commoner.” In the remarks he does not say anything about England, but he says simply “one of the lower rank or common people, one under the degree of nobility,” as though he were writing for this country. He says also “A member of the House of Commons, a student of the second rank in the University of Oxford, England.” There he mentions England, but in the other definitions he leads you to infer that in this country we have nobility and House of Commons, and so forth. “Inn” he says “House for lodging and entertainment of travelers.” That is very well. “In England a College of Common Law of professors and students and so forth.” In his “Inns of Chancery,”—there he does not say in England—“College in which young students formerly began their law studies. These are now occupied chiefly by attorneys, solicitors and so forth.” Now, of

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7773 *Prof. Harry Thurston Peck—Direct.*

course, any intelligent reader would know at once that that was an English definition, but he is careful, or at least he wants to show "In England" with reference to the College of Law Professors, but in "Inns of Chancery," he lets us think we have Inns of Chancery and solicitors and probably barristers.

7774 MR. HALE: I object to the witness' statements beginning "he lets us think" as being a mere conclusion; the witness should confine his testimony to pointing out what appears in the books.

THE WITNESS: Now, for example, here is the noun "turbary," which is marked as a noun. He says, "in law, the right of digging turf on another man's land." 2. Turbary,—“the liberty which a tenant enjoys of digging turf on his Lord's lands.” 7775 Here is nothing to show that that is an English word in the first place. Now, here is a sort of a thing that is very common. "Navy," a noun.

"The whole of the ships of war belonging to a nation or king. The Navy of Great Britain is the defense of the kingdom, and its commerce." Nothing about our Navy.

7776 "Commonalty, the common people in Great Britain"—there he mentions Great Britain, "All classes and conditions of people who are below the rank of nobility." Now, I have a long list here of Briticisms without the definitions written out. It is a list of words, where the definitions are given in the Webster 1847 in a British form, and as written for Britain, and as a rule

Prof. Harry Thurston Peck—Direct.

7777

with nothing to show that they are written for English readers, and apparently as representing conditions and usages in the United States, whereas they are not. The list is as follows:

BRITICISMS IN WEBSTER 1847.

ACRE	BANGING	
ACTOR 3.	BANKRUPT	7778
ADVOWSON	BANOY	
BAILIFF	BARBERRY	
BALLIAGE, or more correctly BAILAGE.	BARQUE	
BAND—BAND OF PEN-SIONERS in England.	BARON	
BARROW	GRACE a—Title	
	b—Act (English Universities.)	7779
BARSE	INQUEST	
BASALT	LADY	
BROACH	LANDLORD	
DEGRADATION	LANE	
DELEGATE	LARCENY	
DEMISE	OCTILLION (no reference to American usage).	
DEMY	OCTOBER	
DENIZEN	OCTENNIALLY	
DEODAND	PARISH	7780
DEPONENT	PARISH-CLERK	
DISCLAIM (of tenant and lord)	QUAD ("evil, bad").	
ESQUIRE	QUADRILLION (no American definition).	
ESSOIN	QUARTETTE	
ESTATE	QUARTET	

7781 *Prof. Harry Thurston Peck—Direct.*

QUICKSET

GALLON

GAOL (notice the spelling)

GENTLEMAN-COMMONER

GENTLEMAN-PENSIONERS

GENTRY

GEST

QUINTET

QUINTILLION

RECOGNIZANCE

RECUSANT

SACK ("twenty-six stone").

WHIFFLER

WOODMAN

WORSHIP

7782

GLASS-COACH

GOD-FATHER

Q. 23. What comment has Worcester made on errors?

MR. HALE: Objected to, unless the copy of Worcester is produced.

7783

A. This last paragraph of Dr. Joseph E. Worcester's preface to the dictionary of the English language, Boston, 1860—

MR. HALE: The question is further objected to as incompetent, irrelevant and immaterial, and as merely an unsworn declaration contained in a printed book, in no way binding upon the complainant.

7784

A. (Continued) "It will be apparent to any one who may examine this Dictionary, that a great deal of labor has been bestowed upon it in order to bring it to its present state; and it is believed that it will carry with it evidence of much pains having been taken to make it both correct and useful; but no amount of labour, research and care can render such a work free from errors and defects. The best authorities that can be had, differ

Prof. Harry Thurston Peck—Direct.

7785

in many cases from each other; and they will sometimes inevitably lead astray."

Q. 24. In questions 122 and 123, the witness Mawson gives a list of words in defendant's dictionary which refer to other words by cross reference. These are cases where the word referred to does not itself appear in the defendant's book. Could you find any such statements in the Webster 1847?

7786

MR. HALE: Objected to as irrelevant and immaterial.

A. I think there are some in that list which is already on the record, as miscellaneous errors.

Q. 25. Aeolian harp is one, already given? A. Is one, yes. "Kaffir" is the title under which he gives it, and he says, "See Caffer". When you reach "Caffer" there is no such title there. A certain amount of research will enable you to find "Caffre" which is contrary to Webster's own kind of spelling, and he has missed his cross reference.

7787

MR. HALE: I object to anything the witness does not point out.

THE WITNESS: For example: "Fancier" which of course means a bird fancier, or animal breeder. He says, "One who fancies". Nobody would know that that meant anything except a fanciful person, but he says, "See Fancy".. Under "Fancy" there is no reference to the occupation of a fancier. Secondly, that is a cross reference that does not cross refer, and no one would know from its original one. There are a large number of words in the

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Prof. Harry Thurston Peck—Direct.

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matter of cross references, where Webster, or those who acted for him, where Webster violates his own principle. The principle of cross reference, which Webster sets forth, is that words of different spelling and meaning, or words of different spelling which are pretty nearly equal in value, and his preference is only a personal preference, should be either bracketted together, as for example, he had sarsaparilla and zarsaparilla bracketted together to show it is an "s" or "z", but he thinks it is "s", and then that should always be the case, and you should not have the other. Mr. Mawson says you should never have this kind of a thing. "Purr", "See Pur", but you should have "pur" which is the preferred form, and "purr" with a sort of brace running around it. Now, there are a great many instances of Webster 1847 dictionary, where he takes a word, defines it, and then refers you to the other form somewhere else in the book, or may be only a few lines off, and not always in accordance with his own orthography. For example, he has "saber" and right under it, with a brace "sabre". That is in accordance with his system, and he defines it, but over in the back of the book, or a little further on, he says "sabre", "See Saber", that is to say he has rather heaped up the matter of cross reference. I find the same thing in "Purr". He defines the word under one form, and he cross refers at the same time, so you don't know which is the preferred form. Now, as to—

Prof. Harry Thurston Peck—Direct.

7793

MR. CARROLL: I think we have enough.

MR. HALE: I object to the interruption of the witness' answer by counsel with the obvious result of closing his lips.

Q. 26. In witness Mawson's parallel column exhibits were included certain extracts from John Ogilvie's Imperial Dictionary. What is the origin of this book?

7794

MR. HALE: Objected to as incompetent, irrelevant and immaterial, because it does not appear that the witness knows the origin of the book referred to, and because the book is not in issue in this case; also as calling solely for the conclusion and opinion of this witness.

MR. CARROLL: The witness Mawson indicated certain indentities between defendant's dictionary and John Ogilvie's Imperial Dictionary, and offered these identities as evidences of origin in Ogilvie's dictionary, and it is the purpose of the testimony which is to follow to show that John Ogilvie's dictionary was in fact itself based on and taken from Webster's.

7795

MR. HALE: The counsel's statement does not correctly summarize the purpose or effect of the witness Mawson's testimony in the record as mentioned. Further, it appears that the witness Mawson at the time prepared and pointed out the identities between defendant's book and the Webster 1847 edition, and the similarities between defendants' book and the Ogilvie book referred to was in regard to matters in the

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Prof. Harry Thurston Peck—Direct.

7798

Ogilvie book, and not in the Webster 1847. It is further objected to upon the ground that the proposed line of proof is inconsistent with the answer which alleges that defendants' book was based upon the 1847 book, and nowhere asserts that it was based upon the English John Ogilvie's dictionary; also upon the ground that it is shown that defendants' book is a substantial copy of the British Empire dictionary, and no connection whatever between the last named dictionary, and any other dictionary is shown.

7799

MR. CARROLL: The defendants are not attempting to prove that its dictionaries are based upon the Ogilvie dictionary or any other English dictionary, but are simply proving by this testimony which is to follow that similarities between defendant's dictionary and John Ogilvie's Imperial dictionary are not inconsistent with a basis in or derivation from Webster's dictionary, inasmuch as the John Ogilvie book itself is based upon and derived from Webster.

7800

A. I should say that my knowledge of the origin of this book is derived from that very authoritative work known as the "Dictionary of National Biography," edited by Sir Leslie Stephen, in conjunction with Mr. Sidney Lee, both gentlemen being of very high rank in the field of letters.

MR. HALE: Objection and protest is made against the witness detailing matters which he has read in the books named, as

Prof. Harry Thurston Peck—Direct.

7801

incompetent, irrelevant, and wholly immaterial, and no proof whatever of the facts recited.

MR. CARROLL: As the facts belong to the past about which there can be no living witnesses brought to testify, the best evidence is that to be found in authoritative and scientific histories. This evidence is offered on that basis.

7802

MR. HALE: This is not a question of science or anything of that nature. It is a pure question of fact.

THE WITNESS: May I state that the notice of Ogilvie, which was prepared by Sir Leslie Stephen and Mr. Lee, was itself based upon a memoriam, written immediately after the death of Ogilvie, and is not to be had in this country at all, but prepared by a townsman, and intimate friend of Ogilvie's, and is in all the British—all the large British libraries. They did not go about at large getting their information, but they went right to the man who knew Ogilvie best, and knew the facts of his life the best.

7803

MR. HALE: The last preceding statement of the witness is objected to as obviously not evidence, but pure hearsay or surmise.

7804

Q. 27. What does the article in Sir Leslie Stephen's book say about the origin of this dictionary?

MR. HALE: Objected to upon all the grounds stated.

7805

Prof. Harry Thurston Peck—Direct.

A. It says that—may I read from my notes?

MR. CARROLL: Yes.

THE WITNESS: I read from Sir Leslie Stephen's—

7806

MR. HALE: Why don't you produce the books? I object to the witness reading a statement without producing the books from which he reads, so that the whole statement may be seen, and not only selected portions of it.

THE WITNESS: I am reading all there is to it.

7807

Q. 28. Now, please answer, Dr. Peck, giving precisely where the book is, and the page upon which this appears, and the reason why you have not produced it? A. Well, first of all, the book can be had in the Public Library on 40th Street, in the General Reading Room; as you go into the General Reading Room, it is in the left hand—northwesterly corner, occupying three large shelves, and there is the book from which I extracted all that had to do with this literary work; what had to do with his marriage or his children and so forth, I omitted. The rest I have here verbatim, and I could easily—the reason I haven't it here, is that those books are not allowed to go out of the library. I could take witnesses with me, and could swear to the accuracy of it, before a Notary Public, if necessary.

7808

MR. HALE: The objection is renewed.

THE WITNESS: I have not answered the whole question. And it is in the ninth volume, and on page 21.

Prof. Harry Thurston Peck—Direct.

7809

MR. HALE: The objection is renewed upon the further ground that it is incompetent for the witness to give his own selection of matter from the book stated without producing the book so that complainant may see for itself what, if anything, is relevant.

THE WITNESS: I will take nothing but what refers to Mr. Ogilvie—you don't want anything about his birth or grandmothers or anything of that sort.

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"John Ogilvie in 1818 had an accident by which one of his legs had to be amputated above the knee. After that he taught, and in 1826 he made for Blackie & Sons an annotated edition of Stackhouse's History of the Bible. Messrs. Blackie engaged him in 1838 to prepare an English Webster's English dictionary." That is a curious thing, an English Webster's English dictionary,— "the result being the Imperial Dictionary of the English language, and it appeared in parts from 1847 onward and was published complete in 1850, and supplemented in 1855." In 1863 Ogilvie issued an abridgement of the dictionary under this title, "Comprehensive English dictionary, explanatory, pronouncing and etymologizing," credit being given to Mr. Richard Cole. In 1865 appeared the Student's English Dictionary, Etymological, Pronunciatory, and in which etymology and definition received special attention. Ogilvie's last work was a condensation of the Student's dictionary, 1867. At his death, he was revising the Imperial dictionary, which was issued in 1882, 1883, under the editorship of Dr. Charles Ammandale. Ogilvie died in 1867.

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MR. HALE: The answer is objected to as wholly incompetent, irrelevant and immaterial, and a motion is made to strike it out.

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Prof. Harry Thurston Peck—Direct.

Q. 29. Have you got a copy of the Imperial dictionary of John Ogilvie, the first edition? A. (Indicating) This is the Imperial edition of John Ogilvie, which is the first edition, and it appears here in 1850, which is already stated. I have now in my hands the first volume of the Imperial dictionary, English, technological and scientific.

7714

MR. CARROLL: I offer this book in evidence.

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and because no connection is asserted between defendant's dictionary and this book, and because inconsistent with the affirmation of the answer, and with the previous testimony of this witness that the defendant's book was based directly upon the 1847 edition of the Webster's dictionary.

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MR. CARROLL: Subject to that objection, the dictionary is received in evidence, in two volumes, and upon the title page of the dictionary it is designated as "Imperial dictionary, English, Technological and Scientific, adapted to the present state of literature, science and art, on the basis of Webster's English dictionary."

MR. HALE: Read the rest of it.

MR. CARROLL: You can do that.

7816

MR. HALE: The partial quotation from the title page is objected to because it omits the material language which is as follows; immediately following the words quoted:

"With the addition of many thousand words and phrases from the other standard dictionaries and encyclopedias, and from numerous other sources, comprising all words purely English and the principal and

Prof. Harry Thurston Peck—Direct.

7817

most generally used technical and scientific terms, together with their etymology and their pronunciation, according to the best authorities. Edited by John Ogilvie, L. L. D."

MR. CARROLL: At page 2 of the preface is found the following language:

"Webster's dictionary which forms the basis of the present work is acknowledged both in this country and in America to be not only superior to either of the two former, but to every other dictionary hitherto published."

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MR. HALE: Complainant objects to the statement read by counsel from the preface upon the ground that the same is incompetent, irrelevant and immaterial, and not evidence, and because defendant's book is in no way connected with the Ogilvie dictionary, from which counsel read.

7819

Q. 30. Is the Annandale dictionary based on this dictionary?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and as calling for facts not shown to be within the knowledge of the witness, and as calling for a conclusion and opinion of the witness.

A. Yes, the Annandale book is an enlargement of the original Ogilvie.

7820

Q. 31. In the witness Mawson's testimony he allowed forty-five per cent of identity between the Webster 1847 and Defendants' book. Is that the correct amount of identity between the two books?

MR. HALE: Objected to as calling for a conclusion, unless the witness will produce

7821 *Prof. Harry Thurston Peck—Direct.*

the data upon which his answer is based, comparing the two books.

A. No, it is not.

Q. 32. What is the correct amount?

MR. HALE: Same objection repeated.

A. 67.6 per cent.

7822 Q. 33. Upon what do you base this statement? A. Upon personal count of two hundred pages, personal comparison of two hundred pages of the Webster's New Illustrated, and part taken from every letter of the book with the corresponding pages of the Webster's 1847, and the comparison indicated a total in percentages.

Q. 34. Have you marked the identities? A. I have marked the absolute identities; I have marked the practical identities; and I have marked the paraphrases, using great distinction in the last.

7823 Q. 35. Will you please produce the copy of Webster's New Illustrated Dictionary in which you have made these markings, and also the copy of Webster's 1847 in which you have made the markings? A. This is the copy of Webster's New Illustrated in which the markings have been made, I can read you, if you like,—

MR. HALE: The books will speak for themselves.

7824 THE WITNESS: This is the Webster 1847 which has been marked.

MR. HALE: Have you indicated any pages that were marked?

THE WITNESS: Yes, I have a complete list of the pages that were marked. For instance, in the letter A there were thirty pages. The first number, two hundred, was

Prof. Harry Thurston Peck—Direct.

7825

taken for the New Illustrated Dictionary. That represents something over three hundred pages in the 1847 Webster. The titles in the Syndicate book were 6,932, and the Webster titles were 5,651. This, however, is what you would like to see.

(Handing papers to Mr. Hale.)

I have also a special thing, and this is a printed form—

7826

Q. 36. Please describe it? A. This is a printed form in which I have arranged these words in groups of five pages each for convenience, and with convenient numbers. They are numbered, each group, 1, 2, 3, 4 and 5. They are sub-divided by a vertical line through the middle, so that each column is counted, and the words in each column were counted, first of all, under the words of the column; secondly, words marked in red which denotes absolute identity; thirdly, words marked in blue which denotes practical identity, and fourth, words marked in black, if such there be, which denotes paraphrases; that is to say, where a fairly long passage in Webster's has been condensed and paraphrased in the other Webster. Then I have in the next, I won't say directly, a number of titles in Webster—at least a number of titles that are not in Webster's, but that are in the Webster's New Illustrated. I ought to say that the basis of this is on both titles which appear in the Webster's New Illustrated, and which appear in Webster. If the title appears in Webster, and it is not in the Webster's New Illustrated, why, that is not taken into account. Words that are in the New Illustrated, however, and that are not in Webster are taken into account, merely by way of information, but they are not counted, in words

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Prof. Harry Thurston Peck—Direct.

under those titles. Now, with that explanation, and at the end of each group of five, there is a percentage of Webster's five pages of 56 or 61, and so on, and the whole total is given on the last page, percentage of Webster in 200 pages, 67.6, so it is very easy for you to test it in any place as to the number of words in a column, as to the number of Webster words in a column and as to the number of words or definitions that are merely Webster, and certainly Websterian, and those that obviously come from Webster.

7830

Q. 37. Have you also written at the bottom of each column, marked in the New Illustrated, the percentage for that column itself? A. That column itself.

Q. 38. So that even without reference to this last tabulation it is possible to go directly to the book itself and find at the foot of each column the exact count for that column? A. Yes.

7831

MR. HALE: In which book is that?

THE WITNESS: For example, just look at this a moment: Of course, there is marked the percentages in Webster; that is a convenient form. The outside of the book explains it. (Indicating Webster's New Illustrated Dictionary.) You will see that certain titles are marked in red, and every title that is underscored, the title merely, that is marked and underscored in red, that means that the title is both in this book and in the Webster book. Now, if you find a title—and many titles are not underlined at all—you will find that nothing is underlined, because they are in Webster and not in this book. That is all explained on the outside.

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Prof. Harry Thurston Peck—Direct.

7833

Q. 39. In your examination and marking of these books, what in general did you discover about definitions of technical or scientific terms?

A. I found that with regard to technical and scientific terms that there were—that the original Webster definition had been somewhat modified, owing to the fact that the sciences have changed and been modified since then, and that sometimes there would be added another line in order to bring the subject up to the present state of knowledge. When such a thing occurred, as Webster could not have known it, and in fact, as Webster anyway did not have it in his books, those were bracketted as not being in Webster, and as not being possible to be in Webster, but mainly because they were not in Webster.

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Q. 40. Were the definitions of scientific terms in the Webster 1847 in most instances what you would term ideal definitions?

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MR. HALE: Objected to as irrelevant, immaterial and as leading.

A. No.

Q. 41. Why not? A. Because it seemed it was perfectly certain that Webster himself was not a scientific man, and he blundered, and made definitions that hardly defined. If you go from his book to this book, for example, you will find a great difference in scientific and technical definitions, and in the Webster's New Illustrated they are much better than the Webster 1847.

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MR. CARROLL: The Webster's New Illustrated Dictionary is received and marked in evidence as the witness Peck's Webster's New Illustrated Exhibit, and the copy of

7837

Prof. Harry Thurston Peck—Cross.

Webster's edition of 1847 is received in evidence and marked in evidence as Defendant's Exhibit Webster 1847 with Peck's markings, and the summary of percentages, appearing upon twenty-five form pages, is also offered in evidence and received in evidence and marked in evidence as Defendant's Exhibit Explanatory of Peck's Percentages.

7838

CROSS EXAMINATION by Mr. Hale:

x Q. 42. Dr. Peck, did you personally mark the two exhibit volumes, Webster's 1847 edition, and Webster's New Illustrated dictionary, which have just been offered in evidence? A. I did.

x Q. 43. Did all the work yourself? A. Yes, in the way of marking, yes; I had sometimes a reader to go over and verify things that I have done.

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x Q. 44. And you had fully compared and saw in the two books the matters which you marked? A. Yes, for the matter in the two books which I marked.

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x Q. 45. You have marked what you term "paraphrased matter." Do you in your testimony to-day, with reference to these marked exhibits, use the term "paraphrase" in the same sense as you defined and explained it in your testimony upon the former occasion? A. I presume so, because there is just one definition for paraphrasing, and that is the restating or another stating of the same fact or facts in the nature also of a condensation.

x Q. 46. Is the term "paraphrase" as applied to these two exhibit volumes to be understood in the same sense as the term "paraphrase" was used by you in connection with Defendant's Ex-

Prof. Harry Thurston Peck—Cross.

7841

hibit C, which was offered upon your previous examination? A. I presume so. Mr. Mawson has used the word in different senses.

x Q. 47. Never mind how Mr. Mawson used it. We want to undersand your testimony. How did you use it? A. That is the way I used it.

x Q. 48. So it means the same in these exhibits as it does in your other exhibits? A. Other exhibits, yes.

x Q. 49. In stating these percentages, which you have stated in your table, and at the foot of the pages in the Exhibit Volume, Webster's New Illustrated Dictionary, you counted all the words underlined in red? A. Yes.

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x Q. 50. And also all the words underlined in blue? A. Yes.

x Q. 51. And the number of words underlined both in red and blue was the figure you took to calculate your percentage? A. No.

x Q. 52. Is that correct? A. Those underlined in black also.

7843

x Q. 53. You included those? A. Yes.

x Q. 54. In ascertaining the percentage? A. Yes. They represent a very small revision of large Websterian quotations, in other words, a paraphrase.

x Q. 55. For example, on page 76, beginning with the letter B in the Exhibit Volume, Webster's New Illustrated Dictionary marked by you, at the foot of the first column I find the figures, 63 per cent. Just precisely what does that mean? A. It means the taking as a basis of one hundred per cent. all the titles in Webster—all the titles that were common to this book, and the Webster book; that representing the basis of one hundred per cent. I added up the words that were in red, blue and black, and made a percentage on that

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Prof. Harry Thurston Peck—Cross.

basis they were so much of the total number of words in the column.

x Q. 56. In other words, does this 63 per cent. which appears at the place specified, mean that the words underscored in that column—A. Represents 63 per cent. of the column, and they are Websterian words.

7846

x Q. 57. You do not mean that 63 per cent. of the entire column in defendant's dictionary can be found in Webster's 1847? A. Yes, except where—no, they are absolute identities; they are absolute and practical identities, and there are paraphrases, 63, and are such as any impartial person would say came from Webster or were in Webster.

7847

x Q. 58. Confining our attention to this first column under the letter B, on page 76 of this exhibit volume, do you mean to say that the words underscored in that column comprise 63 per cent. of all the matter in that column? A. No, only 63 per cent. of the Webster part of the column.

x Q. 59. Just what do you mean by that? A. I mean of the part of the column which might have been in Webster; that means that 63 per cent. was in Webster.

7848

x Q. 59. 63 per cent. of the entire column? A. Not of the entire column, but of so much of the column as you will find in Webster—at least you will find the titles in Webster, and where he might have had these particular words.

MR. CARROLL: In computing the percentage which appears at the foot of each column, Dr. Peck took as his 100 per cent. the total number of words used in defining the titles which were given both in defendant's

Prof. Harry Thurston Peck—Cross.

7849

dictionary and in the Webster 1847. Words used in defining titles which did not appear in the Webster 1847 were not included in the 100 per cent., upon which the percentage noted at the bottom is computed.

x Q. 60. Is that what you mean, doctor? A. What I mean. Absolutely.

x Q. 61. You do not mean that the 63 per cent. for example, then, is the 63 per cent. of Webster's dictionary carried forward into defendants' dictionary? A. It is 63 per cent. of so much of Webster's dictionary as was carried forward into the defendants' dictionary. It represents 63 per cent. of the possible 100 per cent. which might have been carried forward from Webster's dictionary.

7850

x Q. 62. What percentage of defendants' entire book upon your own theory of marking might have been taken from Webster's 1847 edition? A. 67.6 per cent.

7851

x Q. 63. Of the entire book? A. Well, no; I am basing that on an examination of two hundred pages, in comparison of some two hundred pages of this book with what corresponds in Webster's, as beginning with the Webster title and ending with the Webster title. You will see that these run by even pages, to make it so much more definite.

7852

x Q. 64. But on that basis— A. Yes.

x Q. 65. (Continued) Do you arrive at the conclusion— A. Yes.

x Q. 66-67. (Continued) Did you arrive at the conclusion 67.6 per cent. of all the matter in defendants' book might have been derived either

7853

Prof. Harry Thurston Peck—Cross.

by copying, paraphrasing or abridging from Webster's dictionary of 1847? A. Yes.

7854

x Q. 68. That includes words in defendants' book which do not appear in the 1847, is that correct, or do you exclude those from your 100 per cent.? A. That has nothing to do with the 100, there may be words that are so closely similar. Now, if you will let me give you an example—suppose the word "helmet" is defined in one book as "a knight's head covering," and the other has "the head covering of a knight." I should mark that red—I beg your pardon, I should mark that blue, because that has a change, but if each takes "the head covering of the knight," that would be red, but if there is a change or a little change like that, I say that is out of Webster.

7855

x Q. 69. Assuming this matter entirely clear, please look at the first column of page 77 of your marked exhibit. In that column I find fourteen terms defined. Of these fourteen terms five of them are underscored in red, indicating according to your testimony that those same terms are found in Webster 1847? A. Yes, exactly.

7856

x Q. 70. At the foot of that page you have the figures, 66 per cent. What I want to know now is whether that 66 per cent. means 66 per cent. of all the matter appearing under the fourteen terms, or whether only the matter appearing under the five marked terms? A. It is 66 per cent. of the matter appearing under the terms—the titles marked in red.

x Q. 71. And the other nine terms which are defined in that column do not enter into your computation at all, is that correct? A. The other nine that are defined and not marked in any way—they do not enter into my computation at all.

Prof. Harry Thurston Peck—Cross.

7857

x Q. 72. Then 67.6 per cent. does not mean that 67.6 per cent. of all the matter in defendants' book— A. 66 per cent.—

x Q. 73. (Continued) Of all the matter in defendants' book was or might have been taken from the 1847 edition of Webster? A. Well, it represents, so far as you can represent a thing by averaging, it represents the average result which you get from making this close comparison with two hundred pages of this book.

7858

MR. CARROLL: The 67.6 per cent. represents that portion of matter which is defined in Webster and also defined in exactly or nearly exactly the same way in this book.

x Q. 74. In giving your percentage of the whole, which you stated was 67.6 per cent., did you add the percentages which appear at the bottom of the columns in the marked volume exhibit before you and average them? A. Yes.

7859

x Q. 75. So that whatever the markings in the first column on page 77, for example, mean or show, would apply to all the other columns? A. Yes.

x Q. 76. With the exception of a difference in the count? A. Yes.

x Q. 77. It is not true then that 67.6 per cent. of this entire volume is marked to indicate what in your opinion is copied or paraphrased from Webster's 1847? A. Of the entire volume, no.

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x Q. 78. Or even of the two hundred pages, which you marked? A. Oh, yes.

x Q. 79. Do you mean to say that the markings upon this volume for two hundred pages are ap-

7861

Prof. Harry Thurston Peck—Cross.

proximately 67.6 per cent. of all the matter contained upon those two hundred pages? A. The Webster matter, all the titles—

x Q. 80. I am talking about all the matter on those pages; is that true or is it not true? A. Upon all the matter which formed the 100 per cent. on these columns.

7862

x Q. 81. Have you underscored 67.6 per cent. of all the words that appear upon the two hundred portions of? A. I underscored all the words that I did—

MR. CARROLL: No is the answer to that.

THE WITNESS: I did not underscore—

MR. HALE: Let him explain it.

THE WITNESS: No, but we want to be fair about this. Now, you understand, Mr. Hale, that what I was marking was titles.

7863

MR. CARROLL: What is the question on the record?

MR. HALE: I object to the interruption of the witness.

(Last question repeated by the stenographer).

MR. CARROLL: Please answer that yes or no, doctor.

7864

MR. HALE: I object to counsel assuming control of the witness while under cross examination.

THE WITNESS: No, I do not want to follow Mr. Carroll or anything but my own analysis of the thing. I am trying to make it clear to you, that all the pages that I marked, the two hundred pages, were not all marked, but all the parts which belonged—which had Webster titles—where we

Prof. Harry Thurston Peck—Cross.

7865

had titles identical with those of Webster, were marked. If Webster did not have a certain title or if we did not have a certain title that he had, that was not marked; that is, the words under it were not marked, could not be very well. We might have some words that he had not. We could not mark those on the basis of Webster, and I certainly could not mark Webster on the basis of ourselves, but I understood the question to be, did I mark—I thought it was rather odd—did I mark all words that were marked on those pages, and I said yes.

7866

x Q. 82. The question is, do the words which you marked in any way upon the two hundred pages constitute as much as approximately 67.6 per cent. of all the matter contained upon those pages? A. No; that represents 67.6 per cent. of what I regard as the Webster matter on those pages.

7867

x Q. 83. Then you do not mean to testify that 67.6 per cent. of defendants' entire volume was or might have been derived from Webster? A. Why, no; where the titles were not in Webster or were not in our book, it could not be.

x Q. 84. There is a considerable percentage of defendants' titles belonging to that class? A. I do not know; they are mostly.

7868

x Q. 85. What percentage? A. Well, I couldn't say. There are 1281 titles that are in the Syndicate book and not in Webster, if you put it that way.

x Q. 86. And how many words used in the definitions of defendants' twelve hundred and odd words—

7869

Prof. Harry Thurston Peck—Cross.

MR. CARROLL: That does not appear.

THE WITNESS: That does not appear in here.

x Q. 87. So you cannot state then the percentage of matter in defendants' book which could not have been derived from Webster? A. Could not have been derived from Webster, no.

7870

x Q. 88. You cannot state that? A. I cannot state that.

x Q. 89. Do you mean to testify that you found a considerable number of what you consider errors or incorrect statements in Webster 1847? A. Yes.

7871

x Q. 90. What is your opinion of the book, nevertheless, as a scholarly production? A. I consider that in its time it was a scholarly production; of course I don't know of any dictionary that isn't in some respects defective, but it is the work of a scholar, but I consider now, to-day, I would not have it or use it or think of using it; it is very archaic.

7872

x Q. 91. In your list of words headed "orthography," which you read into the record, you have referred to words of the class of "instil," "skilful" and other words, in which Webster used the double "l" whereas the other forms used only one "l," and in your comment upon that you said that Webster's was the less simple form? A. Yes.

x Q. 92. What was Webster's reason for using that form, if you know? A. Why, in many cases, as "instil" I fancy he had—well, thought he wished to preserve the double "l" from the Latin, in the original form.

x Q. 93. Do you recall what reason he gave in the preface explaining his orthography? A. No,

Prof. Harry Thurston Peck—Cross.

7873

I read over all that, about his orthography, but I do not remember anything about that now.

x Q. 94. You do remember that Webster did say something upon that subject? A. Yes, and upon—he went rather thoroughly and minutely into the questions of orthography.

x Q. 95. And he used the double “l” principle, did he? A. No one saw what seemed to be the principle; he set forth his reason, yes. The general principle—the leading principle was simplicity.

7874

x Q. 96. Did that have anything to do with his adoption of “er” or “or” in the termination of words, such as “abettor”? A. Apparently not, because he has not been consistent at all in that.

x Q. 97. Did not he refer to that in his statement of his principle of orthography? A. He did refer to it, but he did not carry it out.

x Q. 98. In other words, he established a principle that he did not follow? A. Yes. You never can tell whether he is going to say “er” or “or”. It is just the way he happened to feel. Sometimes I can discover his reason, as for example, in “abettor” he took that because the legal fraternity had taken it, and you will find the Century dictionary has taken that. “Abettor” is used properly only in legal language.

7875

x Q. 99. He was rather insistent upon the double “l”, however, was he not? A. Yes; the same as “re” and “er”.

7876

x Q. 100. And he placed that in part upon the ground of consistency and simplicity in spelling, did he not? A. Simplicity in spelling, yes.

x Q. 101. So that when the word was lengthened by the addition of another syllable, the spelling of the word in both forms would be consistent? A. Yes.

7877

Prof. Harry Thurston Peck—Cross.

x Q. 102. That was his principle? A. As I recall, yes, that was his principle, but he lost in simplicity, because sometimes you know that double "l" occurs in the middle of a word, and not at the end, and there I cannot see any reason for it.

7878

x Q. 103. One of the great distinctions or differences between Worcester's dictionary and Webster's dictionary was in the matter of spelling, was it not? A. No, I do not think that you can say that, except it was not such a great difference between the 1847 and the 1886 Worcester; there was a good deal of difference, but I do not say that is the principal feature.

7879

x Q. 104. Was it not characteristic that Worcester did not follow Webster in these spelling innovations which Webster sought to introduce? A. Yes, in many cases, and also in his definitions which were more exact than Webster's.

x Q. 105. I believe you have stated that you always preferred Worcester to Webster? A. I did.

x Q. 106. On this list of words headed "orthography" which you have produced, you frequently have the phrase under the words "approved by Worcester"? A. Yes.

7880

x Q. 107. Just what does that mean, and why did you introduce it in this list of words? A. That means that Worcester included it as a permissible form, and I could have read from the preface to your alleged book as to the comparative value of those first and second preferred forms.

MR. CARROLL: You can, if you want to; it is in evidence. He can look at that.

Prof. Harry Thurston Peck—Cross.

7881

x Q. 108. When in this list you say “preferred by the Century dictionary”, or by the Standard dictionary, that means the same thing as where you say “preferred by Worcester”? A. Or by Webster or Worcester; there is only one in there, if it plays any part.

x Q. 109. And where you say “allowed” that merely means it is a permissible form of spelling, is that correct? A. That means they put that second, but here is where I should like—if I might read this little passage from your preface, or Dr. Harris’ preface?

7882

MR. HALE: I object to that as needlessly extending the record. The only purpose of the question is to understand the witness’ notations to the words.

THE WITNESS: I think it should be understood what “preferred” and “allowed” means.

7883

x Q. 110. It is unnecessary to read anything from books to state that. I am trying to find out what you mean by that, and you have already answered the question.

MR. CARROLL: The witness is attempting to read a statement in one of complainant’s books, which exactly indicates what he meant by the preferred form.

THE WITNESS: It seems to be very sensible and right.

7884

MR. HALE: I have no objection to his reading it if he insists upon it, but complainant does not call for it, and is not bound by it.

THE WITNESS: May I read it?

MR. CARROLL: Yes, you may.

7885

Prof. Harry Thurston Peck—Cross.

7886

THE WITNESS: He says, "Speaking of alternative spellings, the first spelling is the preferred form, and the second spelling an allowed form or second form. In all cases where two forms of spelling are recorded that one is placed first which is regarded by the editors as the preferred form. In many cases, however, the second form is so widely used as to be practically on an equality with the one given." In other words, one is preferred and the other is thought to be almost—at least in the editor's mind—practically as good.

7887

x Q. 111. Under some of these words, in your list headed "orthography," such as "distil" and "dulness" as spelled in the Webster 1847, you have the notation, "The less simple form." Do you mean that as a criticism of Webster's preferred form and spelling? A. Yes, I mean that he has not been consistent with his own principle. "Dullness," for example,—what is to be gained by the two "l's" in dullness? That would have no bearing upon the possible condemnation of another word.

7888

x Q. 112. You have spoken of Webster's error in spelling the word "abettor" instead of spelling it "a-b-e-t-t-e-r"? A. Yes.

x Q. 113. And have stated it was due to his mistake of etymology, is that correct? A. Yes; I consider it an etymological blunder.

x Q. 114. Was that at all common in Webster 1847? That sort of thing, of a hybrid? Words introduced in hybrid? A. Yes.

x Q. 115. Mistakes in spelling due to Webster's mistaken etymology; was that at all common? A.

Prof. Harry Thurston Peck—Cross.

7889

Well, mistakes are there; I don't know what they were due to.

x Q. 116. You have stated that Webster should have made the spelling of certain French words consistent with the pronunciation, did you not? A. I did not exactly—did I say that?

x Q. 117. Just what did you say on that subject? A. I said inasmuch as he had made the pronunciation consistent with the spelling of the French, that is, the French spelling, I think he should have left the French spelling, inasmuch as the French is in use. Now, if you spell it "aid-de-camp" most persons would say "aid-de-camp," but if you spell it "aide-de-camp," that at once shows it is the true French form, and most persons say "aid-de-kong," as Webster pronounces the word. Spelling it "aid-de-camp," it would not lead you to assume it was a French word.

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x Q. 118. In such words as "gramme," for example, which I assume is the correct French form— A. No, excuse me, Mr. Hale. One thing about this, I was not in any way attacking Mr. Mawson's spelling as a rule, but rather defending the propriety of the form which the New Illustrated had adopted with great difference. In other words, I say in most cases you will find the New Illustrated, in the latest Webster, the form in the latest Webster, and at least as an authorized and variant spelling, and so you will find it in most of the other Standard American dictionaries. I objected to have it described as essentially British when it is contained and approved by the three leading American dictionaries.

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Prof. Harry Thurston Peck—Cross.

x Q. 119. In such words as "gramme," for measure, which you stated is the correct French form of the word, and in which Webster gave the spelling "gram," was not Webster's spelling in accordance with his principle of a simplified spelling? A. Yes, it was, but I should say there were two usages, one the French form, and it is allowable, or you can use the Webster spelling, but I wish you would look up the "cotillion," for instance.

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x Q. 120. In this list under the word "ledger-line," as spelled in defendants' dictionary, you state that "this is the only form in Worcester." Just why do you make that statement, and what does it mean? A. It means that you cannot find "leger-line" in Worcester. "Ledger" is the only form that Worcester gives.

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x Q. 121. But defendants' dictionary was not based upon or following Worcester, was it? A. No, I am showing what Mr. Mawson brought up, that the distinctive American spelling is not fundamentally that of Webster, and that the value of the American dictionary's standing very often differs from that, and you should call it British, if it happens, and if they all agree, and the dictionaries agree with the New Illustrated, and that happens to be an English form, too.

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x Q. 121. In this particular instance of "iedger-line," defendants' dictionary conforms to Worcester, and does not conform to Webster 1847, isn't that correct? A. That is so, yes.

x Q. 122. And in other instances it conforms to the Century dictionary or Funk & Wagnalls' Standard dictionary, and not Webster's, is that correct? A. Yes, it is, for the reason that I gave. Mr. Mawson said the general American usage was that of those three dictionaries.

Prof. Harry Thurston Peck—Cross.

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x Q. 123. You have spoken of the word "detector" as spelled in defendant's dictionary, and which is spelled, "detecter" in Webster 1847 dictionary? A. Yes.

x Q. 124. And you have pronounced Webster's manner of spelling as etymologically incorrect? A. Yes, that is to say, that is a hybrid word.

x Q. 125. As a matter of fact, did not Webster explain his reasons for ending such words in "er" rather than "or," so as to have a whole class of words spelled alike? A. He said something of that sort, but he did not follow it up. 7898

x Q. 126. But that was his principle? A. That was his general principle, yes.

x Q. 127. Then defendants' book is more Websterian than Webster's, is that what you mean? A. I think so, yes, in some respects,—not in all respects. I think it is more intelligent than the Webster 1847. It is a better book.

x Q. 128. How did Professor Mahn's etymologies as prepared in 1864 compare with the etymology of Professor Sheldon of Harvard, about the year 1890? A. Why, Professor Sheldon of Harvard is as much in advance of Professor Mahn as Professor Mahn is in advance of Webster, because in 1864 that was before a general knowledge of Grimme's law had come about, before Verner's law had been discovered, and before the epoch making work of Brugmann had come on. Professor Sheldon and Professor Verner both worked on this last dictionary. They are ahead of the profession. Professor Mahn represented an intermediate stage; he represented, if it is of any interest,—he represented the old grammar, the old school of grammarians, of which the head was Professor Georg Curtius. 7899
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Prof. Harry Thurston Peck—Cross.

x Q. 129. Did you compare Ogilvie's English Imperial dictionary of 1850 with Webster's dictionary of 1847? A. I compared it in the sense of—not quite the sense that you mean, marking, or anything like that, but I read over a great deal of it, a great deal of it, one after the other, so many pages of one, and so many of the other, to get a general impression.

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x Q. 130. Was John Ogilvie anything of a scholar? A. He was not a finely educated scholar; he was a man of scholarly instincts.

x Q. 131. Of some reputation? A. That gave him his reputation, of course; he was a rustic person.

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x Q. 132. Did he make any contributions to the book which he published? A. Oh, undoubtedly, yes; he spent—according to their biographies of him, the only thing you can get to now, he used to make alterations to see whether he could improve definitions and things of that sort, but I do not think they represented—from reading the two books I think he did endeavor to make it more exactly scientific; I mean scientific in the sense of defining scientific terms with more clearness and precision than Webster did.

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x Q. 133. Substantially as you explained upon your previous examination, when you referred to this book? A. Yes. Well, I did to-day, I think—no, I did not to-day. I said to-day that this book—that the trouble in Webster in regards to scientific terms was that he was not—he did not seem to be very familiar with the subject, and he would go to a very long winded person like Professor Olmsted, and Professor Dana of Yale.

x Q. 134. Do you know what changes were made in the subsequent edition of Ogilvie's English Imperial Dictionary which came out about the

Prof. Harry Thurston Peck—Cross.

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year 1883,—was it not? A. You mean in the Annandale?

x Q. 135. No, the Ogilvie's Imperial Dictionary published in England, the later edition of it? A. Well, there was a later edition of it—you mean Annandale's?

x Q. 136. I mean the book published under the title of the Imperial Dictionary by Blackie? A. There were a good many changes in etymology, and there were also a good many more—it was made more encyclopedic.

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x Q. 137. There were considerable changes made in it, in other words? A. There were changes in addition, really, to definitions; they had then by that time found that there had been necessity of changes, in the advance of knowledge, and in the inventions, and so forth, which Webster had partly got the glimmerings of.

x Q. 138. Do you know whether or not the compiler of defendants' book ever saw a copy of John Ogilvie's dictionary? A. Well, the compiler of the defendants' book,—I don't know who he was.

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x Q. 139. Then you do not know whether or not he saw a copy of John Ogilvie's dictionary? A. No.

x Q. 140. Do you know the Rev. Mr. Davidson, whose name is upon the title of the British Empire dictionary? A. No, I do not know him.

x Q. 141. Ever hear of him? A. No.

x Q. 142. He has no reputation as a lexicographer? A. Well, I would not say that, but I don't know him.

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x Q. 143. Not to your knowledge? A. Not to my knowledge, no.

x Q. 144. You do not know from what sources he compiled his book then? A. Not at all, no.

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Prof. Harry Thurston Peck—Cross.

x Q. 145. Is it your idea that if the title page and covers were ripped off of John Ogilvie's dictionary, it could be published in this country to-day and be properly called a Webster's dictionary? A. I would say yes.

x Q. 146. You would think that would be quite proper? A. Yes.

x Q. 147. Did you actually count all the words defined in defendant's dictionary, that is, the titles? A. No.

7910 x Q. 148. You do not know then whether or not Mr. Mawson's count as contained in the table which he read in evidence and which appears on page 517 of the printed record of complainant's printed case, is or is not correct? A. I do not.

x Q. 149. And you are not prepared to testify upon that subject? A. No, I have no knowledge of it.

7911 x Q. 150. Did I understand you to say that Webster 1847 spells jail "gaol"? Is that his preferred form? A. Well, yes.

x Q. 151. Under which head does he define it? A. He defines it under "gaol," and he defines it much more briefly under "jail."

7912 x Q. 152. Any cross reference between the two words? A. Why, under "gaol" he enters the remark, after defining it, and has the pronunciation "gole," and crosses that with "gaol," a different word. It would be convenient to write this word uniformly "jail," but he defines it to the extent of two lines, whereas "jail" he does not make a reference to, but under "jail" he has had a sort of change of heart, and where previously he has "jail," only a case, a crib,—he has practically the same definition, and he says, "Sometimes written very improperly "gaol" and is improper-

ly pronounced "gole." In other words, he uses both forms, but under the "gaol" he defines it, and gives it his part of speech, and certain other derivatives, from it, like "jail-bird" and so forth, and that is what I say when I say his cross reference system is not good; they ought better to have been together. "Jail" which he prefers and "gaol."

x Q. 153. You have spoken of certain definitions in Webster 1847 which you designated as British in form and substance, is that correct? A. Yes.

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x Q. 154. In many of those instances was not the word so defined by Webster a word not in common use in this country? A. Very true, but that does not excuse him from mentioning English meanings and not mentioning this country at all.

x Q. 155. But that is true? A. In many words, yes, but in many other words very deceptive.

x Q. 156. Taking the word "turbary," that is an instance of a word that is not commonly used in this country? A. No.

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x Q. 157. And in which Webster gave a British definition of it? A. Yes, absolutely.

x Q. 158. And it is used commonly only in Great Britain? A. Oh, yes, that is perfectly true, but it does not justify him; what he ought to have said was Great Britain, and an ignorant or semi-ignorant person would not be confounded by it.

x Q. 159. Where Webster defined a word which was used in a different sense in this country from the sense in which it is commonly used in England, he would give both meanings and designate one "English," would he not, as a matter of common practise? A. No, not as a matter of common practise; he would a good deal, but not so

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Prof. Harry Thurston Peck—Cross.

much as he ought to do. I should say about fifty per cent. of the cases where such a thing arises, he would not mention the American at all. If the usages were more English than American he would let the American go, and perhaps not even say in Great Britain.

x Q. 160. I gather that you have not a very high idea of Webster 1847 as a book? A. Why, the
7918 more I study it the less I think of it. I think he should have known more than to—I think his errors were largely, or I should say that he was tainted by Johnson, and that he does do things that he criticises in Johnson. For example, indefinite definitions and polysyllabic definitions.

x Q. 161. Throughout your direct examination you frequently used the word "Webster" or the pronoun "he." In each instance you were referring to the 1847 edition of Webster's edition? A.
7919 Yes, I was very careful; if I expressed any other edition I gave the name of it. But the point of the matter is the two books here, and so if I say the Syndicate book I would mean that (indicating), the red one, but I will try to say Webster 1847.

x Q. 162. In Defendant's Exhibit Imperial Dictionary of John Ogilvie, edition of 1850, I read from the preface as follows: "Notwithstanding, however, the acknowledged superiority of Webster's dictionary, over all others hitherto published, it does not come up to our idea of what a dictionary ought to be in order fully to meet the wants of the present day. Webster has done much, but he has not done enough. He omitted
7920 many English words and significations in frequent and already authorized use; his list of scientific and technical terms is not sufficiently

Prof. Harry Thurston Peck—Cross.

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copious, and in defining or explaining those he has selected, he has not always consulted the best and most accurate authorities. Some of his definitions likewise have become inaccurate owing to the progress and the improvements made in the arts and sciences since the time he wrote. There are some other forms of a minor description to be found in Webster, such as wrong accentuations, unwarranted alterations in the orthography of certain words, and instances of false orthoepy.

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In adopting Webster's dictionary as the basis of the Imperial dictionary the great object of the editor in preparing the latter has been to correct what was wrong and to supply what was wanting in Webster, in order to adapt the new words to the present state of literature, science and art. Accordingly every page of Webster has been subjected to a careful examination, numerous alterations and emendations have been made, and a vast number of articles have been rewritten. Very many of Webster's explanations of important terms have been enlarged, and many new and more correct definitions of others given. New senses have been added to old words, where they were found wanting, and a multitude of new words and terms have been introduced, especially in the scientific and technological departments; so that to Webster's addition of twelve thousand words to Todd's Johnson, the further addition has been made of at least fifteen thousand words and terms." Do you know how far the editor or compiler of this dictionary conformed to that?

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A. Well, he conformed to it almost in regard to the scientific and technological and technical terms. He was particularly interested in that, and he gave that his own work, and he had assis-

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Prof. Harry Thurston Peck—Cross.

tants to help him as to the other things, and the others were minute, mostly. It is perfectly true that his criticism—Webster's 1847 was not up to 1847, revised in 1843, really, and you must understand the difference between this country and England at that time; they knew and were familiar with a great many things that we had hardly heard of.

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x Q. 163. This preface also contains the following statement: "More particularly this dictionary has for its object to comprehend all the words contained in Johnson's dictionary with the additions of Todd and Webster, and words selected from the other standard dictionaries and encyclopedias, together with many thousands of words and terms in use not included in any former English dictionary." Did you check his account to see how far he had conformed to that ideal? A. I looked up and tested his book pretty well for new words, words that were not in Johnson or Todd rather—Todd is the standard of Johnson's work—and I looked at his etymology pretty carefully.

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x Q. 164. Did he know any more about etymology than Webster did? A. No, he thought he did, but he did not; and as to additional articles, I was interested in the additional articles, as he said that it was not gotten out with any previous existing work in lexicography, and there are a good many quite interesting—

x Q. 165. Do you know from what sources they came, or did you pursue that? A. Well, yes, he regarded—no, I don't know precisely. But in his studies I know this: That he spent his time going over Webster and seeing what was lacking, and seeing what could be put in.

Prof. Harry Thurston Peck—Cross.

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x Q. 166. Do you know what use he made of Richardson's dictionary? A. Yes, he mentioned Richardson; he says there in the passage which I read—he says that Webster's is better than either of the other two.

x Q. 167. Either Richardson or Johnson? A. Either Richardson or Johnson. He meant Richardson and Johnson, but he uses Richardson quite a little.

x Q. 168. Is it an existing dictionary to-day, or is it a dead work? A. It is a dead work.

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x Q. 169. Did you examine complainant's parallel column exhibits prepared by Mr. Mawson in preparation for your testimony? A. I did, yes, some, not very much. That is to say I did not care very much about his minor dictionaries, Chambers and Cassell's and those—I have known them in the years gone by; I did not go over his prior ones; I was interested in what he had in his parallel columns.

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x Q. 170. You promised at your last examination to produce the exact name of the book referred to by you as the Bond book. Have you done so?

MR. CARROLL: Objected to as irrelevant and immaterial, and the witness is directed not to answer.

MR. HALE: The witness is requested to answer the question. He is called to show the alleged Websterian character of defendants' book, and this bears directly upon it.

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MR. CARROLL: He is called absolutely for the purpose of rebutting Mr. Mawson's testimony.

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Prof. Harry Thurston Peck—Cross.

MR. HALE: Which relates solely to the sources and origin of the books.

MR. CARROLL: This has no relation to his prior testimony whatever.

MR. HALE: The question is repeated.

MR. CARROLL: And by direction of counsel, the witness refuses to answer.

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x Q. 171. Was a dictionary ever published in England under the title "Webster's English Dictionary"? A. Not that I know of.

x Q. 172. Did you ever see a dictionary by that title? A. No.

x Q. 173. You do not know of any work by that title? A. No.

x Q. 174. You read a quotation from some work— A. From Worcester's preface.

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x Q. 175. No, with reference to the Ogilvie dictionary. Was the matter which you read quoted consecutively by you? A. No, I omitted what related to his different schools, and schools in which he had taught, and his marrying Susan somebody and all that.

x Q. 176. Your matter was not consecutively quoted matter, then? A. No, but it was—

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x Q. 177. Was the language absolutely quoted, or was it your statement of the substance of it? A. No, the language is all right. It was just as though you put dots in the sentences when you want to leave a sentence out.

x Q. 178. You stated in your former examination that you thought it would have been a little fairer to have underlined only identical words, and not to have taken count of what you have termed paraphrases. Why then in preparing these new exhibits that have been offered to-day

Prof. Harry Thurston Peck—Cross.

7937

did not you follow what you said would be a fairer method? A. Well, in the first place I did not testify that I thought it would have been fairer to mark only identities, because I certainly intended to mark those definitions which were practically the same as the identities. In using the word "paraphrase" then of those passages in black, which included sometimes more than—a good deal more than the different things from the Webster, from the Webster's New International—the fairness has come out in this way. Now, I have been most particular about those paraphrases. Unless it seemed to me that an absolute stranger would see the likeness at once, I have not touched them. I think we were discussing about—I think we were discussing a particular definition at that time, and you asked me wouldn't it have been fairer if I had stopped somewhere instead of blackening the whole column, the whole paragraph. I do not think I said—unless you have the record here—I do not think I said that it would be fairer to exclude paraphrases altogether, but to be very particular about paraphrases and not include in the paraphrases that I marked anything except what was practically in the Syndicate book's definition.

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x Q. 179. You are willing to stand by---

MR. CARROLL: The question is objected to as incorrectly summarizing the witness' testimony.

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x Q. 180. You are willing to stand by everything you have marked as a paraphrase or as a practical identity in the new exhibits presented today? A. Yes. These new exhibits have been

794¹*Prof. Harry Thurston Peck—Re-direct.*

made with very scrupulous care and perfect conscientiousness.

x Q. 181. And you think they are fairer than your original exhibit? A. I do, really, yes; they are more extensive.

RE-DIRECT EXAMINATION by Mr. Carroll:

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R-D. Q. 182. What were the three great points of difference between Webster's spelling and Worcester's spelling?

MR. HALE: Objected to as irrelevant and immaterial.

A. Well, Worcester kept the "re"; Webster changed it to "er," and Worcester kept the "l's" and Webster did not.

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R-D. Q. 183. You mean in words like traveler? A. In words like traveler, and also in the great class of words ending in "our" like "honour." In other words, the two schools most violently differed with regard to these spellings.

R-D. Q. 184. How are these words spelled in defendants' dictionary? A. They are spelled in the same way as Webster; that is, those particular words. Sometimes Webster himself there forgets and spells them in the British.

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R-D. Q. 185. What did you wish to point out with respect to the word "cotillion"? A. Oh, I wanted to show that glaring inaccuracy there which, if I may read from the preface to the New International—it says "The word 'cotillion' is spelled in the Webster's New Illustrated 'cotillion.'" Now, then, this is very interesting. It means that they have not kept up with the Webster theory of spelling. They have changed it a

Prof. Harry Thurston Peck—Re-cross.

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good deal, and they mention "cotillion" as one of the words which they have changed, and they have gone back to the other system which you may call British, or what you please; that is, the Webster 1847 spells it "cotillon" but the present Webster, the New International, spells it "cotillion" and he gives a list of other words. For instance, Webster spells "asbestos" in the 1847 as "asbestus." Now, they have it in the International as "asbestos"—quite a number of words like that.

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R-D. Q. 186. In the two hundred pages marked by you, what was the total number of titles appearing in the Syndicate book? A. 6,932.

R-D. Q. 187. In the two hundred pages marked by you, what was the total number of titles which appeared both in Webster's '47 and in the Syndicate book? A. Well, in both books—5,651.

R-D. Q. 188. What, therefore, is the number of titles in the Syndicate book in the two hundred pages counted by you which did not appear in the Webster 1847 at all? A. 1,281.

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RE-CROSS EXAMINATION by Mr. Hale:

R-x Q. 189. You have spoken of two schools of spelling in connection with Webster and Worcester. Do you mean that Webster represented one school, and Worcester the other school? A. It came to that, yes. There was quite a long controversy for several years between the Worcesterians and Websterians. It was not only as regards spelling, but that was one of the things.

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R-x Q. 190. And that controversy was what you referred to as a clash of books in your previous testimony? A. If I did say that, yes; that is what I had reference to.

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Prof. John Carew Rolfe—Direct.

R-x Q. 191. That would correctly describe it?
A. Yes.

MR. HALE: That is all.

MR. CARROLL: That is all.

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THE WITNESS: I wish to make a statement, in reference to the strife between the Websters and Worcesters. I want, for my own sake, to be accurate. I think Mr. Hale said "That is what you mean by the clash of books." Well, that was not based entirely on orthography. There is one other thing that was even as important as that, and that was pronunciation, and there are two systems of pronunciation. Now, you know that there is the Worcester system also, and just as a matter of my own reputation, I want to say that the battle of the books or the clash of the books was based not only on orthography, but upon orthoepy.

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Deposition closed.
(Signature waived.)

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PROFESSOR JOHN CAREW ROLFE, a witness called by and on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

- Q. 1. Will you state your age? A. 53.
Q. 2. Residence? A. Philadelphia, Pennsylvania.
Q. 3. Street number? A. 44 Chestnut Street.
Q. 4. Occupation? A. Professor of Latin.

Prof. John Carew Rolfe—Direct.

7953

Q. 5. Whereabouts? A. University of Pennsylvania.

Q. 6. What degrees have you? A. "A.B.," "A.M." and "Ph.D."

Q. 7. From what places? A. "A.B." Harvard; Ph.D. and A.M., Cornell.

Q. 8. What honorary degrees have you, if any? A. None.

Q. What lexicographical work have you done? A. I studied lexicography with Professor Woelflin in Munich for a year, and I have written numerous articles on lexicography in German and American periodicals and have made vocabularies, etc., and have had occasion to use dictionaries a great deal.

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Q. 10. Have you been a member or officer of any learned societies in this country? A. I was President of the American Philological Association last year and President of the Classical Association of the United States and I am a member of the American Philosophical Society of Philadelphia.

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Q. 11. Where have you been instructor or professor? A. At Harvard and Cornell.

Q. 12. Please give the years? A. Well, Cornell in 1885 to 1888; Harvard 1889, 1890; Michigan, from 1890 to 1902; Pennsylvania, 1902 to the present time. Also in the American School at Rome in 1907 and 1908, and Columbia, Harvard and Cornell summer schools; Columbia 1909, Harvard 1901 and Cornell 1903.

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Q. 13. If you were attempting to ascertain the origin of a dictionary, what method would you pursue?

MR. HALE: Objected to as irrelevant and immaterial, calling for a mere opinion and as speculative.

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Prof. John Carew Rolfe—Direct.

A. Well, I should say I should follow substantially the plan followed by the witness who was last examined. That is, I should go through the dictionary and mark the absolute correspondences, the virtual correspondences, and then the paraphrases.

Q. 14. Have you ever used this method in attempting to ascertain the origin of a dictionary?

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MR. HALE: Same objection.

A. Never in the case of the origin of a dictionary, but in the comparisons between other books. I have had occasion to use it twice in comparing two books; one was suspected of being taken from the other, and I followed it informally in the case of dictionaries but not in any special cases.

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Q. 15. The witness Mawson testified that this method of determining the origin of a book was inaccurate and unreliable for the reason that all dictionaries in any given language must have a certain amount of similarity due to four reasons which he stated in his testimony. He gave as his conclusions a percentage of 38, which he said must inevitably be identical. What is your opinion on that subject? Is his objection a valid one?

MR. HALE: Objected to as irrelevant and immaterial.

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A. I should say not; that is, I should say in examining a dictionary that one must inevitably include all matters in which it corresponded with another.

Q. 16. Have you examined the two exhibits offered by Professor Peck with his last testimony, namely, Webster's 1847 dictionary and Webster's New Illustrated, both marked by him? A. I have.

Prof. John Carew Rolfe—Direct.

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Q. 17. How carefully have you examined these books? A. With great care; spent the better part of a week examining them, and I examined a great number of pages with very great care.

Q. 18. Would you say that the definitions which have been underlined by Dr. Peck could be accounted for by coincidence, inevitableness, use of synonyms or use of common sources?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and calling for a mere opinion as to which expert testimony is not admissible, and as calling for possibilities.

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A. I should say not all by any means, only a very small amount of them.

Q. 19. What is your opinion of the character of the marking made by Dr. Peck?

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as calling for an opinion.

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A. I examined them with that special idea in view, and my conclusion was that they were carried out with extreme conscientiousness.

Q. 20. Did you notice any instances of markings which might have been marked with more advantage to the defendant?

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MR. HALE: Objected to as incompetent, irrelevant and immaterial, as leading, and as calling for secondary evidence, the books themselves being the only primary evidence.

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Prof. John Carew Rolfe—Direct.

A. I noted some under each head, that is, some blue ones which I thought fairly might have been marked red, and more especially in some places unmarked, which might have been marked black; that is paraphrases.

MR. HALE: Can you point them out?

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THE WITNESS: I cannot point out any number of them; I think perhaps a few; there are a few. Perhaps it would be enough to state the words under which they occur. The words that I have here are daisy, damage, echinoderm, echinus, falsify, gahnite,—those will serve as examples.

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Q. 21. From your examination of these two books and from the markings in them, what is your opinion as a literary man about the propriety of calling the defendants' book a Webster's dictionary?

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MR. HALE: Objected to as incompetent, irrelevant and immaterial, as calling for the opinion of the witness upon a question as to which an opinion is not admissible, and as calling for the conclusion of the witness upon one of the main issues in this case; also for his opinion on a matter of law.

A. From the point of view in which the question was asked I should say it was admissible; that was your question, was it admissible?

MR. CARROLL: Read the question.

(Question repeated by the stenographer.)

Prof. John Carew Rolfe—Direct.

7969

THE WITNESS: It seems to me on the whole, proper.

Q. 22. What percentage would you say was an approximately sufficient percentage of identity between two books, in order to say that one is based upon the other?

MR. HALE: Objected to as irrelevant, immaterial, incompetent, and as calling for a mere opinion and a guess.

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A. It is a matter which I have given some thought to in other connections; I should say about 50 percent.

Q. 23. Why do you say that? A. Because that is half of the 100; it is about half of the material in the book, and it seems I should say that a book in which half of the material was taken from another book was or might fairly be said to be based on that book.

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Q. 24. In what other cases does that come up? A. Well, it would come up in the case of any book that was supposed to be based on another book, or in any case where a person was considering the propriety of calling a book which he made a book based on such and such a book.

Q. 25. And it is your opinion that in all such cases if one book is 50 percent identical with another, it may with propriety be named after that other?

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MR. HALE: Same objection.

A. That is my opinion.

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Prof. John Carew Rolfe—Cross.

CROSS EXAMINATION by Mr. Hale:

x Q. 26. Are you acquainted with the reputation and standing of Webster's dictionary as an authoritative reference book in this country?

MR. CARROLL: I object to that question as calling for something not in proper cross examination, and something which is improper at this time.

7974

MR. HALE: It is strictly proper cross examination.

A. I am.

x Q. 27. What is that reputation? A. Well----

x Q. 28. Good, bad or indifferent? A. Well, it is good. I thought you wanted me to go into details.

7975

x Q. 29. When you use the word "based" in speaking of one book as being based upon another, just precisely what do you mean by the word "based"? A. My idea would be that the book upon which the other was said to be based was the one from which the author of the other book took the foundation of his material, changing it—

7976

x Q. 30. You mean it was the main source of the contents of the later book? A. I do, yes, and with such corrections and changes as he might see fit to make in the interest of accuracy or scholarship or something of that sort.

x Q. 31. In other words, you think he must have the book before him in doing the work and actually see it? A. Yes.

x Q. 32. Just what did you mean by a paraphrase? A. Well, by paraphrase I should understand taking a definition or a portion of a book

Prof. John Carew Rolfe—Cross.

7977

and stating the same thing in different language without any essential change of that—or of ideas.

x Q. 33. Would there have to be any identity of language in order to constitute a paraphrase? A. Ordinarily I should say there ought to be something that would give you or give a connection between the two; it might be slight. I recall one case in my examination of which one word—I do not recall the word—I do recall the word, but I cannot recall the definition, under which it occurred, but that one word seemed to me unusual.

7978

x Q. 34. In other words, the identity must be in some significant particular, some significant word, rather than a common word? A. Yes, in the case of the paraphrase, yes.

x Q. 35. And what is your definition of abridgement? A. Abridgement—I should understand the taking of a definition consisting of a number of words and omitting a portion of it, and retaining others. For instance, if the word was defined as quick, fast, rapid, and the fast were omitted, I should say the definition was abridged.

7979

x Q. 36. Is it your idea that the main difference between an abridgement and a paraphrase is that an abridgement is a shortening of the original, preserving some part of the same language, whereas a paraphrase need not necessarily be shorter, and need not have so much identity of language; is that correct? A. Yes.

7980

x Q. 37. You have spoken of the existence of identities between two books as being a fairly reliable indication that one book was based upon another, have you not? A. I have, yes.

x Q. 38. And the greater the extent of the identities the stronger the presumption would be that the book was taken? A. Yes.

7981

Prof. John Carew Rolfe—Cross.

x Q. 39. So that if one book has certain identities with respect to another book, and still more identities with respect to a third book, you would give it as your opinion that the book was based upon the third book rather than upon the second book mentioned, would you not? A. I don't know whether I understand you precisely.

7982

x Q. 40. Suppose a given book whose source you were seeking contained 45 per cent. of matter, or of words identical with the previous book, and it also contained for example, 60 per cent. of matter identical with another book; which one of the last two books would you say, in your opinion, it was based or founded upon? A. I should say that depended on the relation between the other two books in question; that is, if the second book might be derived 50 per cent. from the 45 per cent book, it might be derived from 60 per cent. book.

7983

x Q. 41. Well, suppose they were distinct works with no connection shown between them. A. Then I should say it was based more on the 60 per cent book, naturally.

7984

x Q. 42. In seeking the origin of a literary production, which do you consider the safest to rely upon, the similarities or the differences between the books? A. I should say it depended on which were the greater number. That is, if the similarities were very great, and the differences comparatively small, it would seem that the similarities would be more important.

x Q. 43. What part in that line of endeavor does the existence of common errors play in determining whether one book was used in the composition of another? A. Those are fairly good evidences, I should think, in many cases.

Prof. John Carew Rolfe—Cross.

7985

x Q. 44. Oddities or significant words would play substantially the same part as common errors, in coming to the conclusion, would they not?

A. I should think so.

x Q. 45. Suppose one book was more than 98 per cent. identical with another book previously existing. What would you say as to the relation of one book to the other? A. I should say it was very close, that the second was based on the first, and almost a copy of the book, practically, of the first.

7986

x Q. 46. I show you Complainant's Red Letter Exhibit which has been offered in evidence in this case, in which certain pages in defendants' book which Professor Peck compared with Webster's 1847 are compared with an English book termed the "British Empire Dictionary." The identical portions of the two books are printed in red, and the differences in black. What would you say was the relation between the book in the right hand column, Webster's New Illustrated Dictionary, to the book in the left hand column, headed the "British Empire Dictionary," applying the principles which you have explained on your direct examination?

7987

MR. CARROLL: Objected to as irrelevant, immaterial, the sole issue in this case being whether or not the defendant is entitled to call its book "Webster", and what relations it may have to other books being purely immaterial.

7988

A. If I were testifying on that question I should say that the resemblances were so great as to indicate relations between the two books.

7989

Prof. John Carew Rolfe—Cross.

x Q. 47. And what would be the relation indicated by those resemblances? A. A close relation.

x Q. 48. So close in fact that you would say that one book was practically copied from the other, would you not?

MR. CARROLL: Objected to as leading.

MR. HALE: This is cross examination.

7990

MR. CARROLL: It was not touched upon on the direct examination.

MR. HALE: The question was touched upon in the direct examination when you had him testify as to the means of ascertaining the source of one book, and its relation to another. I am now testing the application of those theories.

7991

A. Assuming the correctness, there can be no question, assuming the correctness of the exhibit for complainants.

x Q. 49 And if in addition to that the author of the book termed "Webster's New Illustrated Dictionary" has stated that he prepared it mainly from the other dictionaries there exhibited, would you have any doubt then as to the relation of one book to the other? You mean if the editor of this book said that he prepared it—

7992

x Q. 50. Yes. A. No, I should not, assuming always the correctness of the exhibit.

x Q. 51. I presume you will agree to the statement that if matter appears in a book, or matter appears in a dictionary, giving senses and meanings which are not contained in any form in a prior dictionary, that as to those senses and meanings the latter book is not paraphrased or abridged from the prior book? A. Yes.

Prof. John Carew Rolfe—Cross.

7993

x Q. 52. In other words, a paraphrase or abridgement always implies an original? A. Undoubtedly, yes.

x Q. 53. And the sense must always be conveyed in different language? A. Must correspond, yes, in different language.

x Q. 54. Could a man with a basso profundo voice pronounce a word with an acute accent? A. It depends on what you mean by acute accent. I do not understand what you mean. If you mean he could pronounce a Greek word—

7994

MR. CARROLL: Just a minute. I have been waiting patiently, Mr. Hale, and I am not going to allow the witness to go on much further on this line, and I will simply warn him not to answer.

(Question repeated)

THE WITNESS: That depends on what you mean by acute accent. He could pronounce a Greek word which was pronounced with an acute accent.

7995

x Q. 55. Webster defines that as follows: "An acute accent is that which elevates or sharpens the voice"? A. Well, that is a different sense.

x Q. 56. Would you consider the following an abridgement of that definition: "High in pitch, or shrill"?

MR. CARROLL: Objected to as irrelevant, immaterial, and I direct the witness not to answer.

7996

MR. HALE: The question is directed to ascertain the meaning of the word "abridgement" or "paraphrased" which he used in his direct examination. Will you please answer the question?

7997

Prof. John Carew Rolfe—Cross.

MR. CARROLL: You are directed not to answer.

MR. HALE: The Special Examiner is requested to certify this question to the Court for a ruling as to the propriety of the question, and the duty of the witness to answer.

7998

MR. CARROLL: The purpose of this session is simply to rebut the testimony of the witness Mawson; only those matters have been gone into on direct examination, and only those matters can be gone into on cross examination.

MR. HALE: The purpose of the cross examination is to determine the meaning of the explanations given by the witness on direct examination, in the giving of which he used the word "paraphrase."

7999

MR. CARROLL: The witness has already sufficiently indicated what he means by the word "paraphrase."

8000

x Q. 57. Would you deem, for example, that in an exhibit designed to show similarities and alleged paraphrases in defendants' book claimed to have been made from Webster 1847, that the two words "sharp, pointed" was a fair paraphrase of the following definition from Webster: "An acute angle in geometry is one that is less than a right angle or which sub-tends less than 90 degrees. An acute angle triangle is one whose three angles are all acute, or less than 90 degrees each; an acute angle cone is one, the angle at the vertex of which is acute"? A. Hardly.

x Q. 58. You would not deem that fair marking if the words "sharp, pointed" were marked in defendants' book to indicate that the definition read from Webster had been paraphrased or abridged?

A. It is very difficult to answer those questions without seeing the two definitions before one, and studying them, but offhand the resemblance does not seem very close in that particular case.

x Q. 59. You would not discover any internal evidence that one book was based on the other from that instance alone? A. I should not say so on that instance.

x Q. 60. You see nothing in "sharp, pointed" that indicates the source in the language read from Webster? A. Is that the only definition, sharp, pointed?

8002

x Q. 61. That is the only definition in defendants' dictionary which is claimed to be an abridgement of the language read from Webster? A. Something would depend, of course, on the context, I should say, in which the word occurred.

x Q. 62. In the matter read, you do not discover any evidence of connection between the two works? A. So far as I can follow it; of course, as I say, it is very difficult to give an opinion on such a question as that.

8003

x Q. 63. In Complainant's Parallel Column Exhibit, I find compared the following three definitions of the word "teratology". In defendants' dictionary: "That branch of biography which treats of mal-formations or deviations from the normal type of animal and plant structure." In Webster's dictionary of 1847, the definition is: "That part of physiology which treats of mal-formations and monstrosities." In Cassell's English dictionary the definition is: "That branch of biological science dealing with monsters and mal-formations." I call your attention to the fact that defendants' dictionary uses the phrase "branch of biological science" while Webster

8004

8005

Prof. John Carew Rolfe—Cross.

uses the phrase "that part of physiology." In determining the origin of the particular definition of that word, in accordance with the principles which you stated on your direct examination, do you discover any significant words which would lead you to think that Cassell's dictionary had been used rather than Webster? A. It does not seem to me that it is quite fair to turn aside from a work to which I have given careful examination and given a careful study, and then to ask me to give offhand opinions.

8006

MR. HALE: The three pages are pasted before you in one sheet so they may be readily compared, and I am inquiring only as to a single definition.

8007

THE WITNESS: There are a number of general principles that affect the statements that I have made, and that is—take this very case of physiology and biology: I doubt whether in Webster's time the term "biology" was used. I think that is rather a new thing, so that I should consider the omission of biology a significant thing. Now, your question was between Webster and Cassell— I do not think I should be able to give an opinion there for the reason that as I say that biology is and seems to me is a new term, a modern term, comparatively recent—

8008

x Q. 64. If defendants' editor had been—

MR. CARROLL: Please let him finish.

THE WITNESS: (Continuing) And then the other seems to me—the other one might be a paraphrase of the other, it seems to

Prof. John Carew Rolfe—Cross.

8009

me; that is, they both deal with—both have, if I am not mistaken, the word “mal-formations”, which seems to be the characteristic thing.

x Q. 65. That is common to all dictionary definitions of that word, is it not? A. I could not say.

x Q. 66. Do you not regard as significant the fact that defendant's definition of that word, while giving the sense which is contained in Webster, and also the sense which is contained in Cassell's dictionary, follows the variations of Cassell's from Webster and uses the word “biology” in place of the word “physiology,” and the word “branch” instead of the word “part.” Do you consider those things at all significant in that short definition?

8010

MR. CARROLL: Objected to as irrelevant and immaterial, and notice is given to counsel for complainant that he is attempting to make this witness his own; that ordinarily counsel for defendants would patiently submit to this appropriation, by counsel for complainant, but this testimony must be printed and ready for final hearing one week from Wednesday, and if counsel for complainant insists upon pursuing this line of examination, defendants' counsel will be forced to direct the witness not to answer.

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MR. HALE: Complainant's counsel intends to ascertain the full meaning of the witness' testimony upon direct examination; complainant is not bound by mere general statements. In order to ascertain

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Prof. John Carew Rolfe—Cross.

the facts accurately, the statements of the witness must be applied to particular cases.

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A. Well, as I have already said that I did not consider the substitution of "biology" for "physiology" a significant case, as I say that is a comparatively new term, within my own recollection surely; the term "physiology" has been differentiated into various branches.

8015

x Q. 67. If defendants' editor had been working direct from the Webster before him in making his definition, and applying the principles which you have stated should be applied in ascertaining the origin of a book, do you think he would have made the variations which apparently have been made between the definition in Webster, and, for example, the definition in Casell? A. I notice one or two features in the definition that might happen in that thing; that is, I notice several times that such changes as between synonymous words, as "branch" and "part" were made; apparently, as far as I could figure it out, the compiler was introducing a little originality into his work; such changes are not infrequent.

8016

x Q. 68. You noticed those changes when it did not shorten the definition or improve it materially, in your opinion? A. Oh, yes, when it did not improve it at all, simply variety; that is, "branch" for "part" would be a good example.

x Q. 69. I call your attention to the definitions of the word "terminator" as contained respectively in defendants' dictionary, Webster's 1847 and Cassell's. Those definitions are respectively as follows: Defendants', "One who or that which terminates; the dividing line between the

illuminated and non-illuminated part of the moon." Webster's definition: "In astronomy, the dividing line between the enlightened and unenlightened part of the moon." In Cassell's dictionary: "One who or that which terminates; the dividing line between the illuminated and dark part of the moon." Please compare those three dictionaries and apply the rules for ascertaining the source of literary matter, and say which, in your opinion, the defendants' definition most probably came from? A. There is another general principle that comes in there, and that is the improvement of Webster's definition. It seems to me that it is obvious that Webster's use of enlightened and unenlightened there is clearly not modern, if it ever was good English; it may have been good English, I suppose it was, but it certainly would be misleading now, so that that would naturally be changed. Then Webster has omitted a meaning which is an obvious one, that is, "one who terminates."

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8019

x Q. 70. So that meaning did not come from Webster? A. No, that meaning must have been added, naturally.

x Q. 71. Now, do you find those two matters in which you criticised Webster corrected or changed in Cassell's in identical language with defendants' definition? A. Yes.

x Q. 72. Now, what in your fair opinion do you think of the probabilities as to whether the composer of this definition in defendants' book had before his eyes and was working from, the definition in Webster or the definition in Cassell? A. My general opinion about the work of this compiler, if I may be allowed to say that, is that he had Webster before him; Webster was his pri-

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Prof. John Carew Rolfe—Cross.

mary source; that is, he worked from Webster; when he came to definitions of a kind which were archaic or incorrect he either made his own definitions or went to other sources. Now, it is pretty difficult to say—I should think “one who terminates” or “that which terminates” might be made independently by two men.

8022

x Q. 73. According to the principles that you have stated, however, which of those two books, Webster or Cassell, is indicated as the source of defendants’ definition? A. Well, I do not think that it is a fair case, because the definition of “terminator” is unsatisfactory in Webster.

Well, similarity of language is not a reliable test, or even identity of language as to the source of a book. You must make some allowances, I think.

8023

x Q. 74. This is one of the cases where an allowance must be made? A. I should say so, off-hand, yes. At the same time there is some—I think the definition, the second definition in either book might be called a paraphrase of Webster with an addition.

x Q. 75. In other words, they both give the sense—— A. The addition, of course, does not come from Webster.

8024

x Q. 76. Two dictionaries defining the same word in as short a form as possible could hardly avoid giving the same sense, could they? A. I should hardly think so.

x Q. 77. That is, one definition in one dictionary could almost always be called a paraphrase of a definition in another dictionary, could it not, providing the sense were given?

MR. CARROLL: Objected to on the ground that this witness has already carefully ex-

Prof. John Carew Rolfe—Cross.

plained what he means by paraphrase, namely, that he would consider it proper to mark as a paraphrase anything which did not contain some distinctive words.

A. They all have the dividing line, and they all have, in substance, between the dark and light part of the moon, but they express it—

x Q. 78. They could not very well avoid having that sense? A. No, I do not see how they could.

x Q. 79. And the defendants' definition has the significant words in Cassell's, have they not? That is, a large part of the matter omitted from Webster? A. I think there is nothing omitted; it is simply—

x Q. 80. The first definition, for example? A. Oh, the first definition is omitted, of course.

x Q. 81. Is omitted in Webster and is in Cassell? A. Yes.

x Q. 82. That indicates nothing to your mind? A. It would not, without comparison of some other dictionary; that is, it indicates to my mind that the compiler of this dictionary, the Webster's New Illustrated, added to Webster's definition, either from his own inner conscience or some other source; it depends on how he worked.

x Q. 83. Judging solely from what appears in the printed books, what makes you think he used Webster's dictionary and added something to it? A. I do not think there is anything in that particular definition to indicate it.

x Q. 84. Nothing to indicate a Websterian origin of that particular definition? A. Well, I don't know; on the other hand, whether there is or not, because I should have to look in some other dictionaries, and see how that line could be started.

8029

Prof. John Carew Rolfe—Cross.

x Q. 85. There is Chamber's definition. Look at Chamber's and see if that helps you? A. Well, it is closer to Webster than it is to Chambers.

x Q. 86. And closer to Cassell's than to either of them? A. Yes.

8030

x Q. 87. Please look at the definition of the word "teraph," and compare it with the definitions of the same word as contained in Webster's 1847, and in Chamber's dictionary and in Cassell's dictionary, and say what, according to your principles of ascertaining the geneology of definitions was the most probable source of that definition, and include in your answer a statement whether you find any indication that Webster's definition was copied or abridged?

MR. CARROLL: Also look at "teraphim" in the Webster.

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A. Webster has two definitions, "teraphim"—that is a peculiar case, because it seems to me that any one of those definitions—I think that Webster is the source of defendants' definitions.

x Q. 88. Which definition in defendants' book? A. In all of them.

8032

x Q. 89. Point out what indicates that to your mind? A. Well, in the first place he lays stress on the "Hebrew" part of it; that is natural enough, in "images" of household gods. Cassell does not use the images, but uses "idols,"—I was reading from the wrong place. Webster has only this single one. Well, those definitions have been amplified, unquestionably. Now, what was your question?

(Question repeated)

Prof. John Carew Rolfe—Cross.

8033

x Q. 90. Point out what indicates that to your mind? A. I understood somebody to say that Webster had two definitions, one the singular and one the plural.

MR. CARROLL: He has.

THE WITNESS: I see. I should have to think a good deal about that to give a satisfactory answer. A good deal of the material is in Webster; that is, he refers to it as Hebrew. 8034

x Q. 91. You mean the sense? A. Yes; of the three definitions they seem to me quite different in phraseology, considerably.

x Q. 92. And all the similarities that appear—

MR. CARROLL: Had you finished your answer? 8035

THE WITNESS: I had not formulated the rest of it, but I am willing to rest.

x Q. 93. And all the similarities that appear exist between the defendants' dictionary and Cassell's and Chamber's, but none with Webster, is that correct? A. No, I should not say that; that is, we have in Webster in the parenthetical mark "Hebrew" which is a sufficient source for the statement that it was consulted by the intelligent Hebrews, and we have the word "household deities," which is not very different from household gods or images. I think the main question, or an important question is there, whether one is correct in assuming that the man was working from this dictionary as a foundation. 8036

8037

Prof. John Carew Rolfe—Cross.

x Q. 94. Which dictionary do you mean by "this dictionary"? A. From Webster; if he was working with that as the foundation, I think the language could be accounted for.

x Q. 95. But you do not find any indication in that particular definition that he was working from Webster as a foundation? A. Not in that particular one, no.

8038

x Q. 96. I find the word "tercentenary" defined in Webster's New Illustrated Dictionary in the following words: "Comprising three hundred years; a date or function commemorating some event occurring three hundred years before." That word is not defined in Webster's 1847, but in Cassell's I find the following definition of it: "Comprising three hundred years; a date celebrated in commemoration of some event which occurred three hundred years before." On the principles which you explained and on which you based your opinions expressed on direct examination, would you say that defendants' definition of that word had any relation to Cassell's definition of that word? A. I should say that it resembled it in language.

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x Q. 97. Almost identical with it, is it not? A. Not quite, but—

x Q. 98. Very nearly? A. Very nearly, yes.

x Q. 99. Connected phrases are used, and identical, are they not?

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MR. CARROLL: I object to this line of examination on the grounds already stated, and on the further ground that this is obviously not proper cross examination; particularly on the grounds that the exhibit speaks for itself, and that as counsel for complainant explained in the first instance

Prof. John Carew Rolfe—Cross.

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he was only citing these few examples in order to ascertain exactly what the witness meant by the term "paraphrase," and he has shown by his later questions that this was a mere subterfuge on his part, and that he had no set purpose in mind, but that he was simply attempting to usurp this witness as his own witness, and the warning is therefore repeated.

MR. HALE: The statement of counsel is entirely incorrect. This witness testified in chief that he was able by comparing books to ascertain their literary origin. This exhibit affords a perfect means of testing that assumed ability, because it compares several dictionaries in parallel columns.

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MR. CARROLL: This exhibit consists of a few pages taken from a few dictionaries. The witness has no opportunity during the short time when he is on the stand to examine even these sporadic pages, and counsel for complainant has not even asked him to do that, but has picked out certain particular words. Obviously he cannot form any conclusion about the source or origin of any of these books from these scattered instances.

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MR. HALE: It simply demonstrates the utter worthlessness of the line of proof which the defendant has adopted to show the origin of defendants' dictionary.

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THE WITNESS: I simply want to make the statement that those words which are not included in Webster are not included in these percentages; that is, they do not enter into the question of origin at all, be-

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Prof. John Carew Rolfe—Cross.

cause they could not come from Webster if he did not have them. There the compiler of the book must make his own definition, or take it from some other source.

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x Q. 100. That is exactly what I am getting at. Now, from this word then there is an indication that defendants' editor had some other source than Webster for his book? A. There is, yes.

x Q. 101. And there are indications that Cassell's was the probable source of this particular definition, judging by the principles laid down by you on your direct examination? A. Yes, but there might be half a dozen other dictionaries that—

8047

x Q. 102. Well, there might be half a dozen common sources? A. I might be able to find or somebody else might be able to find another dictionary which had a definition nearly identical.

x Q. 103. Yes, there might be three or four of them? A. Yes.

8048

x Q. 104. So similarity or even identity does not infallibly indicate the source, is that correct? A. No, I should not say that it was; that would mean that those various dictionaries went back—or ought to indicate that those dictionaries went back to common source. That is, out of the numerous books that are based on Webster there must be a great many that would have definitions that correspond closely with his. Now, in the case of the Webster's New Illustrated Dictionary, it would not be absolutely fair to say that that definition was taken from here without comparing one or two other dictionaries to see if they had definitions which might indicate a common source of some kind.

Prof. John Carew Rolfe—Cross.

8049

x Q. 105. Assuming that no other dictionaries contained that language as closely similar as defendants' dictionary, and Cassell's dictionary, then what, according to your principles, would be the correct conclusion?

MR. CARROLL: Question objected to as containing an unfounded assumption.

A. Well, offhand, I should say that it would indicate close connection between the two. 8050

x Q. 106. To what extent, if at all, did you compare defendants' dictionary with other books with a view to ascertaining its source or origin? A. Well, when I examined his books I had before me several dictionaries.

x Q. 107. Which ones? A. I had the Standard dictionary, the Century dictionary,—

x Q. 108. In other words, you compared Defendants' Webster's New Illustrated Dictionary with Webster's 1847 and Standard dictionary and the Century dictionary? A. Not in all cases; I compared his dictionary with Webster's dictionary with a view to ascertaining the correctness of his system and the conscientiousness with which it was marked out. 8051

x Q. 109. You mean Professor Peck's system and markings? A. Yes. In not a few cases and especially in the case of, in the scientific terms where there were deviations I looked them up in these other dictionaries primarily with a view to ascertaining whether they were correctly taken from these dictionaries or whether they were definitions that might have been made up to bring those scientific terms into more modern terminology, or otherwise to improve them. 8052

8053

Prof. John Carew Rolfe—Cross.

x Q. 110. You did not make any systematic comparison of the entire book with Webster's 1847 to determine for yourself the relation between the two, if any, did you? A. I went over a great number of the pages which have already been marked.

x Q. 111. Did you go over all the pages marked by Dr. Peck in these exhibit volumes? A. I went over at least two-thirds of it.

8054

x Q. 112. Did you go over all the markings of every character in those books? A. I went over all the markings with very great care, and compared the marked phrases with the language in the Webster dictionary; that is, in the Webster dictionary.

x Q. 113. You did not compare the defendants' dictionary with the dictionary called the British Empire dictionary? A. No; I used such dictionaries as I happened to have on my shelf at the time.

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x Q. 114. And you did not compare it with the book called "The Student's Imperial Dictionary"? A. No.

x Q. 115. Or with the book called the "Crown Dictionary"? A. No, because that was only incidental; it was my principal purpose to test his markings with reference to Webster.

8056

x Q. 116. Test Professor Peck's markings? A. With reference to Webster; just the system and the conscientiousness with which it was carried out.

x Q. 117. Did you see at any stage of your work the parallel column exhibit which I have exhibited to you, and upon which I have pointed out particular words? A. No.

x Q. 118. It was not called to your attention in any way? A. Not that I know of.

Prof. John Carew Rolfe—Cross.

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x Q. 119. Were you told that it was claimed that the defendants' book was based on the British Empire Dictionary? A. No.

x Q. 120. What were you told with reference to the purpose of your investigation? A. Well, I don't know that I can recall all the details. I was given a general idea of what the nature of the point at issue was, and I was asked to examine this method as an expert, that is, to test it, with a view to seeing that it was a correct method, about which I had no doubt in the first place, and whether it was conscientiously carried out.

8058

x Q. 121. You stated that in your opinion you thought that upon the whole defendants' dictionary was properly called a Webster's dictionary. Please amplify that answer, and state how and why you entertained that opinion? A. Well, first because as I was satisfied in my own mind that it contained at least 50 per cent. of material taken directly from Webster's dictionary of 1847.

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x Q. 122. And that was based on your verification of Professor Peck's markings? A. Yes, that was based on that.

x Q. 123. What else? A. And also some other things that occurred to me. Of course, we do not go absolutely hard and fast by red marks and so on, but as you work through a thing of that kind you get an impression. I do not know how much that is, either. That depends on the extent to which one is recognized as an expert, but you get an impression on how the man worked. And when I got through my impression was a little stronger than the percentages would indicate, that is, as to the propriety of the use of the term. That was based on the impression that I had. The term "Webster" has been used very extensively

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Prof. John Carew Rolfe—Cross.

in books which were published by other firms than those who published the Webster's unabridged.

x Q. 124. Do you know of any standard authoritative Webster dictionary published by any other firm than that publishing the Webster unabridged? A. I cannot say that, but I know of books that bear the title "Webster"; I had occasion to look over the catalogue in the Public Library.

8062

x Q. 125. Who called your attention to that? A. I was looking at it for a purpose of my own, so it seemed to me that in view of these facts it was proper to call a book that was based on Webster a "Webster's." I should not feel the same about a dictionary, which had not so wide a use, and had not been so extensively used in that way as Webster's.

8063

x Q. 126. Do you think it would be proper to call Funk & Wagnall's Standard dictionary a Webster's dictionary? A. I should if it were based—if they had fifty per cent Websterian material.

x Q. 127. Without ifs or ands, taking the books as they are to-day, do you think it would be proper to call it a Webster dictionary? A. No, I should not.

8064

x Q. 128. Would you think it would be proper for the Century dictionary to be called "Webster's" dictionary? A. Well, all those things are so dependent on the way in which the dictionary is made.

x Q. 129. As a scholar, and acquainted with dictionaries which are in ordinary use, do you think it would be proper to call the Century dictionary a Webster's dictionary, or to change its name and call it Webster's? A. No, I do not.

Prof. John Carew Rolfe—Re-direct.

8065

x Q. 130. And you do not think it would be proper to call the Standard dictionary a Webster dictionary? A. No.

x Q. 131. And do you think it would be proper to change the name of a dictionary published ten or twelve years ago and call it Webster's dictionary? A. I do not know that dictionary.

x Q. 132. And you do not know whether or not fifty per cent of defendants' volume is taken from Webster? A. Why, I verified his percentages.

8066

x Q. 133. Well, you heard Professor Peck testify that he did not mean to testify that fifty per cent of the whole volume was taken from Webster's. A. I know, of course, that the new words, which do not appear in Webster could not be taken from Webster's. That is apparent on the face of it.

x Q. 134. And you do not know how many of them there are? A. I have heard the figures, about twelve hundred, wasn't it? Something like that.

8067

RE-DIRECT EXAMINATION by Mr. Carroll of the

Witness Rolfe:

R-D. Q. 135. From the three instances which were pointed out to you by Mr. Hale in his parallel column exhibit, were you able to form any reliable opinion about the origin of those three definitions? A. I should say no. I should like more time.

8068

R-D. Q. 136. Did you find any indications from those instances pointed out by Mr. Hale that the editor of the defendants' book did not use Webster? A. No.

R-D. Q. 137. That therefore did not shake your earlier opinion that the editor of defendants' book did use Webster? A. Not at all.

8069

Prof. John Carew Rolfe—Re-direct.

R-D. Q. 138. Have you looked at Defendants' Exhibit Imperial Dictionary by Ogilvie (handing)? A. No.

R-D. Q. 139. Please do so. A. (Witness does so.)

8070

R-D. Q. 140. If the statement upon the title page of that dictionary be true, namely, that it is on the basis of Webster's English dictionary, would you consider, that a book taken from that book was also based on Webster's English dictionary?

8071

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as asking for a mere opinion and conclusion of the witness, and further because it is not shown that there is any connection between defendants' book and the English Ogilvie's Imperial Dictionary, but on the contrary Defendants' book is alleged to have been based directly upon Webster's dictionary and an attempt has been made to show that fact.

8072

MR. CARROLL: Defendants are not attempting to prove any origin or basis in the Ogilvie Imperial Dictionary but are simply attempting to ascertain more correctly what this witness means by "basis", it being counsel's opinion that the definition drawn from the witness by counsel for complainant was not his whole understanding of that word.

MR. HALE: The statement of counsel is objected to as leading.

A. Of course it depends on how he uses "On the basis of the English dictionary"; as it is ordinarily used it would justify me in using the title

Prof. John Carew Rolfe—Re-direct.

8073

"Webster's dictionary." That is, I could answer this question if I had read that title page to that extent; if that is the sense in which he uses it, I should say "yes" in answer to that question, but I should not say so without qualification for I would want to make an examination of the book.

R-D. Q. 141. Then it is your opinion that a book could be truthfully said to be based on Webster's English Dictionary if it came through a book like this based on Webster's English dictionary?

8074

MR. HALE: Objected to as leading and also as incompetent, because calling for a mere opinion.

A. If my first statement is correct as to my interpretation of "basis" so that this could be called the English Webster Dictionary, for instance, I should answer that question by "Yes"; but as I say, the uncertainty is as to the sense in which he uses the term "on the basis of."

8075

R-D. Q. 142. If, for example, the editor of this book in Webster's Illustrated dictionary had never seen Webster's 1847, but had compiled his book entirely from Ogilvie's Imperial dictionary and the result had been as it is in this book, such a large percentage of material identical with Webster, would you say that it was truthfully derived from or based on Webster's dictionary?

8076

MR. HALE: Objected to as incompetent, irrelevant and immaterial, as incorrectly assuming facts, and as calling for a mere guess or conjecture as to a state of facts which is not even claimed to exist.

MR. CARROLL: Defendants truly do not claim this state of facts to exist but are

8077

Prof. John Carew Rolfe—Re-cross.

merely attempting to find out precisely what the witness understands by the words "based on" or "derived from."

8078

A. I should not think it would be a natural thing to do at all, that is, if the title Webster was not given to the Imperial dictionary; it does not seem to me that that would be a natural thing, to term it "Webster" from the legal point of view; on the ethical point of view, I am sure, but from a literary point of view I should not myself use the title "Webster" under those circumstances.

R-D. Q. 143. But if the author of this book had stated that he had followed Webster, you would think that that was reasonable proof of the fact, would you not? A. That he had followed it?

R-D. Q. 144. Yes. A. Why, yes; I do not see why a man should make that statement unless he had actually followed it.

8079

R-D. Q. 145. And would that statement in your mind be corroborated by the internal evidence of the book?

MR. HALE: Objected to as irrelevant and immaterial; as leading and as calling for conjecture.

A. It would.

8080

RE-CROSS EXAMINATION by Mr. Hale:

R-X Q. 146. If a new dictionary was compiled to-day, using as its main sources Cassell's English dictionary, Chamber's English dictionary, and Ogilvie's English dictionary with more or less consultation of all other standard dictionaries, would it be in accordance with the rules and opinions

Francis M. Watrous—Direct.

8081

which you have declared to call such new book, "Webster's" dictionary? A. I should think not.

DEPOSITION CLOSED.
(Signature waived.)

Adjourned to tomorrow, Tuesday, October 29th, 1912, at two o'clock P. M.

8082

NEW YORK, October 29th, 1912.
2 o'clock P. M.

Met pursuant to adjournment.

Present: COUNSEL AS BEFORE.

FRANCIS M. WATROUS, called as a witness on behalf of the defendants in sur-rebuttal, being duly sworn, testified as follows:

8083

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Please state your age, residence and occupation? A. Twenty-five years of age; residence, 31 West 44th Street; student of law.

Q. 2. Have you made a count of the words marked on certain pages of complainant's parallel column exhibit offered in connection with the deposition of the witness Mawson? A. I have.

8084

Q. 3. More particularly have you counted the pages numbered 19 to 28 of that exhibit? A. I have, yes.

Q. 4. The witness Mawson in his testimony stated that from an analysis of these pages 19 to 28, and from an actual count of the words un-

8085

Francis M. Watrous—Direct.

derlined under various dictionaries appearing on these pages, there is matter in defendants' dictionary identical with Cassell's dictionary amounting to 61 per cent. Is that approximately correct? A. That is approximately correct.

8086

Q. 5. Did you verify the underlinings of Mr. Mawson or only count those words which were underlined by him? A. I verified the underlinings by him, Mr. Mawson, and found that they were correct.

Q. 6. I do not think you understand me.

MR. HALE: Ask another question, then.

Q. 7. Did you do anything more than count the words which Mr. Mawson had himself underlined? A. No, I did not.

8087

Q. 8. You did not therefore compare the pages which are cut from defendants' dictionary with the pages cut from Cassell's dictionary in order to see whether or not there might have been more words underlined than are actually identical?

MR. HALE: Objected to as an improper leading form of examination, as assuming a fact as to which no evidence whatever has been offered, namely, that the markings are not absolutely accurate.

8088

MR. CARROLL: The sole purpose of this question is to guard against an admission by this witness of the accuracy of the markings.

MR. HALE: The correct method of examining a witness in chief is to ask him what he did.

A. I did not.

Francis M. Watrous—Direct.

8089

Q. 9. Did you count the words underlined in the pages appearing in this exhibit cut from Chamber's dictionary? A. I did.

Q. 10. From your count, what percentage of words which appear underlined in this exhibit on the pages cut from Chamber's are identical with the defendants' dictionary? A. I found 40.39 per cent.

Q. 11. The witness Mawson stated that 49 per cent. of these pages cut from Chamber's were identical with defendants' dictionary. Was that correct? A. That was incorrect, Mr. Mawson's.

8090

Q. 12. Have you counted the words underlined on the pages cut from Webster's unabridged dictionary in the parallel column exhibit? A. I have.

Q. 13. Have you then computed what percentage of similar matter in defendants' dictionary these words formed? A. I have.

Q. 14. What percentage was that? A. I found 52.22 per cent.

8091

Q. 15. Have you also made a computation on pages 30 and 31 of the above mentioned parallel column exhibit? A. I have.

Q. 16. Did you first count the total number of words?

MR. HALE: I object to the leading form of examination.

Q. 17. Did you first count the total number of words appearing in defendants' dictionary at the left hand column? A. I did.

8092

Q. 18. Did you then count the words underlined in each of the other columns? A. I did.

Q. 19. And have you computed the percentages of words underlined in the six succeeding columns,

8093

Francis M. Watrous—Direct.

based upon the 100 per cent. of the total number of words in the first or defendants' column? A. I have.

Q. 20. What percentage of the total number of words in defendants' dictionary appearing on page 30 do the words underlined in Worcester on that page form? A. 38 per cent.

8094

Q. 21. And what percentage of the words from defendants' dictionary on page 31 do the words underlined in the matter taken from Worcester on that page form? A. 36.

Q. 22. And what is the average percentage of identity between defendants' dictionary and Worcester as is exemplified by these two pages? A. 37 per cent.

Q. 23. Have you made a similar count of the words underlined on page 30 in Annandale's concise dictionary? A. I have.

8095

Q. 24. What percentage of identity did that count show? A. 38.3.

Q. 25. And a similar count of the words underlined in Annandale's concise dictionary at page 31? A. 50.7.

Q. 26. What then is the average percentage of identity between defendants' dictionary and Annandale's dictionary as shown by these two pages? A. 44.5 per cent.

8096

Q. 27. Have you made a similar count of the words underlined in the matter taken from Stormonth's dictionary appearing on page 30? A. 19.8.

Q. 28. And the material from Stormonth on page 31? A. 45.2.

Q. 29. And what is the average per cent. for Stormonth? A. 32.5.

Q. 30. Have you made a similar count of the words underlined on page 30 in the column devoted to Nuttall? A. I have.

Q. 31. What is the percentage of identity as shown by that count? A. It is 26.4.

Q. 32. And on page 31 have you counted the words of Nuttall underlined? A. 44.6.

Q. 33. So that the average percentage of identity between Nuttall and the defendants' dictionary as shown by the matter on these two pages is what? A. 35.5.

Q. 34. Have you also made a similar count of the words underlined in the Student's Standard dictionary on page 30, and computed the percentage of these words as based upon the 100 per cent. of the total number of words in the defendants' dictionary? A. I have.

Q. 35. What percentage does that show? A. 16.6.

Q. 36. And of the words underlined in Student's Standard on page 31? A. 26.4.

Q. 37. So that if these markings be correct, the average percentage of identity between defendants' dictionary and the Student's Standard as shown by the matter given on these two pages, amounts to how much? A. 21.5.

Q. 38. Have you also made a count of the words on page 30, underlined in the column devoted to the Concise Oxford dictionary? A. I have.

Q. 39. What percentage of the words taken from defendants' dictionary do the words underlined in that column form? A. 10.2.

Q. 40. And a similar count for the Concise Oxford on page 31? A. 25.6.

Q. 41. So that the average identity between the words underlined in the Concise Oxford and the

8101

Francis M. Watrous—Direct.

material taken from defendants' dictionary as shown by these two pages, is how much? A. 17.9.

Q. 42. Have you also computed the general average of identities as shown on both these pages and in all the columns between the various dictionaries marked and defendants' dictionary? A. I have.

8102

Q. 43. How did you do this? A. I took the percentage,—I added all the percentages which we got from pages 30 and 31—all of the percentages of the words which we found in the complainant's columns and added them, and divided that by 6, the number of the dictionaries in the investigation.

Q. 44. What did the result show as to average percentage of identity between the dictionaries and defendants' dictionary? A. 31.49 per cent.

8103

Q. 45. The witness Mawson in his testimony stated that not one of the dictionaries which appear upon pages 30 and 31 is based on Webster. Have you compared the matter taken from Nuttall which appears on these two pages with Webster's 1847 edition?

MR. HALE: Objected to as incompetent, immaterial and irrelevant, and because defendants' book is in no way connected with Nuttall's dictionary.

8104

MR. CARROLL: This evidence is offered in rebuttal of Mr. Mawson's testimony, and is intended to prove that his statement that not one of these dictionaries is based on Webster's was unqualifiedly false.

MR. HALE: This witness has not shown himself possessed of knowledge to testify upon that subject.

Francis M. Watrous—Cross.

8105

MR. CARROLL: The witness will give no opinions, but simply a count from which the basis of the books will be apparent.

A. I have.

Q. 46. What percentage of the words which are given in the Nuttall column on page 30 are identical with the Webster's 1847? A. One hundred per cent.

Q. 47. What changes, if any, have been made in the column appearing on page 31 under the name "Nuttall" from the corresponding definitions in the Webster's 1847?

8106

MR. HALE: Objected to as incompetent, irrelevant and immaterial, and because defendants' book has been in no way connected with Nuttall's dictionary.

A. Under "teraph," Nuttall inserts the word "Penates." Under the word "terce" Nuttall inserts the word "part." Under "term" Nuttall inserts "a limited or set space of time." Under the word "terrace" Nuttall inserts "sloping sides and usually laid with turf."

8107

Q. 48. With these exceptions are the definitions appearing in the column devoted to Nuttall on page 31 identical with the definitions appearing in Webster's 1847 for the same word? A. Absolutely identical.

8108

CROSS EXAMINATION by Mr. Hale:

Q. 49. When did you make the counts upon which you have based your testimony to-day? A. I made them during this last week.

x Q. 50. When did you begin? Was it begun and ended within the last week? A. No, it was not. I can find out exactly if I have the date.

8109

Francis M. Watrous—Cross.

x Q. 51. Give it approximately? A. I should say a week ago Monday.

x Q. 52. And you finished when? A. Finished to-day.

x Q. 53. And have you worked all of that time upon these counts and calculations? A. I devoted a great deal of my time to that.

8110

x Q. 54. What proportion of your time in that period? A. I have been up very late nights working on that; once to two in the morning and once until three, and I should say about an average of between two and three hours a day.

x Q. 55. Where was the work done? A. It was done partly in the office and partly at my residence.

x Q. 56. You mean Mr. Carroll's office? Whose office? A. Gould & Wilkie's, yes.

8111

x Q. 57. On page 30 of this parallel column exhibit, how many words constitute the one hundred per cent upon which you based your calculations? A. Page 30, I based my calculations on the first page on two hundred and four words.

x Q. 58. What does that two hundred and four represent? A. Two hundred and four represents the number of words in defendants' dictionary on this page 30.

8112

x Q. 59. That is in the extreme left hand column of that page of the exhibit? A. In the extreme left hand column of that page of the exhibit.

x Q. 60. And all your percentages, referring to page 30, were based upon that number of two hundred and four, is that correct? A. Yes, sir.

x Q. 61. What was the number of underscored words you found in the column headed "Worcester" on this page 30 of this exhibit? A. Worcester; that was seventy-four.

Francis M. Watrous—Cross.

8113

x Q. 62. And how many words do you find, according to your count, in the column headed "An-nandale" upon this same page? A. I found seventy-eight.

x Q. 63. And in the column headed "Stor-month"? A. I found forty.

x Q. 64. And the column headed "Nuttall"? A. I found fifty-four.

x Q. 65. And the column headed "Student's Standard"? A. I found thirty-four.

8114

x Q. 66. And in the column headed "Concise Oxford"? A. I found twenty-one.

x Q. 67. And those were the figures used by you in calculating the percentages for that page? A. Yes, sir, those were the figures used by me.

x Q. 68. Now, what was the number of words constituting your one hundred percent in your testimony in regard to page 31 of this exhibit? A. One hundred percent was two hundred and thirty-one words.

8115

x Q. 69. That represents the total number of words in the extract from defendants' dictionary appearing upon the left hand column on page 31? A. Yes.

x Q. 71. All of the words in that column? A. Omitting, of course, the words which are defined; the words defined are not counted.

x Q. 72. In none of your calculations you counted the title word? A. In none of the calculations has the title been considered at all.

8116

x Q. 73. In other words, and respects, then, the one hundred percent includes every word in the matter taken from defendants' dictionary appearing in that extreme left hand column; is that correct? A. Yes.

x Q. 74. What was the number of underscored

Francis M. Watrous—Cross.

8117

words which you counted in the column headed "Worcester" on page 31 of this exhibit? A. I found eighty-eight.

x Q. 75. And Annandale's Concise? A. One hundred and seventeen.

x Q. 76. And Stormonth's? A. One hundred and four.

x Q. 77. And Nuttall's? A. One hundred and three.

8118

x Q. 78. And Student's Standard? A. Sixty-one.

x Q. 79. And Concise Oxford? A. Fifty-nine.

x Q. 80. Did you make any other counts or calculations in connection with this case in any manner whatever? A. No, no exact calculations; no.

x Q. 81. Did you make any other counts— A. By counts, do you mean numerical computations?

x Q. 82. Did you count anything in any connection in this suit? A. No, I did not.

5119

x Q. 83. You did not count the words of any other dictionary? A. No.

x Q. 84. Or any part of any other dictionary? A. No.

x Q. 85. Did you count the words in any part of Johnson's dictionary? A. Is that connected with this?

x Q. 86. Did you count the words in any part of Johnson's dictionary at any time? A. Not to my knowledge; no, sir.

8120

x Q. 87. You would know if you had, wouldn't you? A. Yes.

x Q. 88. Well, did you or didn't you? A. No, I did not.

x Q. 89. Did you count the words on any other pages of this parallel column exhibit or any part of it or any column of it than pages 31 and 30? A. No, I have not.

Francis M. Watrous—Cross.

8121

x Q. 90. In other words, you counted the underscored words upon pages 19 to 28 of this exhibit, and upon pages 30 and 31 of this exhibit? A. I did.

x Q. 91. And you counted nothing else in this exhibit? A. Nothing else.

x Q. 92. Is that correct? A. That was correct.

x Q. 93. Was that pursuant to any instructions of anybody? A. Why, yes.

x Q. 94. What instructions did you receive on that subject? A. I was instructed to figure out the percentages of words in the dictionaries given, such percentages to be compared with the—to see how near those percentages came to the number of words in defendants' dictionary.

8122

x Q. 95. Did you read Mr. Mawson's testimony? A. As contained in the—

x Q. 96. Any testimony that he gave in respect to it? A. I did not, no.

x Q. 97. You do not know then what Mr. Mawson testified, except as his figures are contained in this parallel column exhibit, is that correct? A. I do not.

8123

x Q. 98. And you saw no part of his testimony? A. No, sir.

x Q. 99. To make sure, please look at page 32 of this exhibit. Did you count anything upon that page or make any calculations? A. No.

x Q. 100. Why not? A. Because I didn't see it; didn't have it to do.

8124

x Q. 101. And did you personally make all the counts and all the calculations, or did you have assistance? A. I made the majority of them myself; I had some assistance.

x Q. 102. What did your assistants do, and who were they? A. Why, one of my assistants—assisted by Mr. Carroll.

8125

Francis M. Watrous—Cross.

x Q. 103. Did Mr. Carroll do some of the counting? A. He assisted me in figuring, yes.

x Q. 104. Did he do some of the counting? A. Yes, he did.

x Q. 105. What did he count? A. In the pages 30 and 31 the comparison of the six dictionaries and the defendants' dictionary, Mr. Carroll helped to figure out some of the percentages.

8126

x Q. 106. What did Mr. Carroll count?

MR. CARROLL: As a matter of fact, Mr. Carroll checked up everything from beginning to end.

A. What I am speaking from his personal knowledge, of course, and as far as that is concerned, that is all that I have definite knowledge of Mr. Carroll's having computed.

8127

x Q. 107. Did he count the words on pages 30 and 31 concerning which you have testified? A. Not to my knowledge, no.

x Q. 108. Did he bring in any figures for those pages? A. He brought me the figures which I had computed previously with two changes.

x Q. 109. You mean Mr. Carroll revised your figures? A. Yes.

x Q. 110. In any of your calculations, did you use any figures supplied by Mr. Carroll? A. No.

8128

x Q. 111. You personally counted every word that appears upon pages 30 and 31 upon which you have based any calculations? A. Absolutely.

x Q. 112. Did that yourself? A. Absolutely.

x Q. 113. Without any assistance? A. Yes.

x Q. 114. Did you make the arithmetical calculations yourself? A. Yes.

x Q. 115. Did you have any other assistance besides Mr. Carroll? A. None at all.

Francis M. Watrous—Cross.

8129

x Q. 116. Did Mr. Carroll make any count which you used in any way in connection with the other pages of this exhibit, that is, in the pages from 19 to 28, inclusive? A. In regard to pages 19 to 28 all that was done by myself.

x Q. 117. Without any assistance whatever? A. Without any assistance whatever.

x Q. 118. Please describe just what assistance Mr. Carroll gave you as to any part of this work?

8130

MR. CARROLL: Mr. Carroll is present and will make a statement of what he did.

MR. HALE: Complainant's counsel wishes it from the witness; he is examining the witness, and protests against any volunteered statements from counsel.

A. I told you a moment ago that Mr. Carroll assisted me in computing these percentages on pages 30 and 31.

8131

MR. CARROLL: A further continuation of this line of examination is objected to as purely irrelevant and immaterial, counsel for complainant having it entirely within his power to check up the figures, and the witness has already testified he made them absolutely alone.

x Q. 119. Assisted is a genneral word. I wish a statement that does not involve a conclusion, if you can make it? A. Well, in this case it really meant checking over.

8132

x Q. 120. Figures previously counted by you, is that what you mean? A. Yes, that is all the assistance amounted to.

x Q. 121. Did the percentages which you have

8133

Francis M. Watrous—Cross.

testified to, relating to pages 19 to 28 of this exhibit, refer to the percentage of defendants' book which can be identified in the various other books named, or the percentage of the various other books named which can be identified with the defendants' book? A. The percentage in the books named which may be identified with the defendants' book.

8134

x Q. 122. Which is the one hundred per cent. the defendants' book or one of the other books? A. The one hundred per cent. is the number of words in defendants' book.

x Q. 123. In every percentage that you have stated? A. In every case that normally is the number of words in the defendants' publication.

8135

x Q. 124. You have stated certain percentages relating to pages 19 to 28 of complainant's parallel column exhibit in connection with various dictionaries named. Please place upon the record the number of words in defendants' dictionary which constituted your one hundred per cent. and the number of words which you counted in the various other dictionaries named, to wit, "Webster's unabridged dictionary," "Chamber's dictionary" and "Cassell's dictionary"? A. On page 19 it is 186. Perhaps I should explain at this time about our taking a certain number of words. May I show you? These words here (indicating) marked with the violet, as you see, do not occur in Webster's; consequently in figuring the Webster percentages, we have taken out these words here which are marked in violet, which do not occur in Webster's. In computing the percentages of the other two books in which these words did occur, we have left them in, so that on each page there will appear two separate denominators.

8136

Francis M. Watrous—Cross.

8137

x Q. 125. In other words, you counted in matter in defendants' dictionary under a title or vocabulary in there that does not also occur in Webster's; is that correct? A. That is it, yes.

x Q. 126. You omitted those from your one hundred per cent.? A. Yes.

x Q. 127. Now proceed with your numbers, please. This is defendants' dictionary. That is, you are going to give the number of words on page 19 that come in defendants' dictionary? A. Yes. On page 19, defendants' 186; Webster, 69; Chambers, 42; Cassell, 92. And the second denominator is 150, from which Webster is computed.

8138

x Q. 128. That relates to defendants' book. Call it second denominator, relating to defendants' book. That is how much? A. 150. Page 19, percentages, Webster, 46, Chambers, 21, Cassell's, 49.5.

8139

Defendants'

	1st.	2nd.	Webster	Chambers	Cassell
P.	20	278	255	133	140
					174
Percentages			49.2	49.8	62.2

MR. HALE: I object to defendants' counsel interrupting the orderly examination of the witness and dictating the form of his answers.

8140

MR. CARROLL: Defendants' counsel has offered to adjourn and have it written out here in form so that it will be legible for the Court, the counts upon which this witness has based his percentages. There has been an objection to this by counsel for complainant, and in order to make the table

8141

Francis M. Watrous—Cross.

legible, the interruption by defendants' counsel has been necessary.

8142

MR. HALE: Defendants' counsel has had ample opportunity to prepare any tables he pleases. He also had an opportunity to put in such calculations as he pleased upon the direct examination of the witness. Complainant's counsel is entitled to an uninterrupted opportunity to cross examine the witness, and bring out such facts as are relevant to complainant's side of the case.

MR. CARROLL: What questions complainant's counsel might ask defendants' counsel had no knowledge of. The interruptions were necessary in order to have the matter correctly stated in the record.

x Q. 129. Please continue with your answer as to page 21?

8143

A.

Defendants'

8144

	1st.	2nd.	Webster	Chambers	Cassell
P. 21	292	275	128	138	185
Percentage			46.7	48.	63.6
P. 22	271	229	117	116	154
Percentage			51.8	42.	57.7
P. 23	208	153	74	87	117
Percentage			48.5	41.4	56.2
P. 24	290	249	152	125	180
Percentage			58.8	43.1	62.1
P. 25	292	270	130	105	199
Percentage			48.5	35.	67.5
P. 26	238	178	90	122	134
Percentage			52.6	51.2	56.4
P. 27	199	182	108	96	116
Percentage			59.5	48.3	57.9
P. 28	58	58	35	14	47
Percentage			60.6	24.1	81.3

x Q. 130. In calculating the Webster percentage I understood you to say that the figures under the name "Webster" in the table which you have just read upon the record were used as enumerators and the figures given under the term "second denominator" were used as the denominators?

A. As the denominators for all, Webster, yes.

x Q. 131. In all the others you used as the denominator the figures first given under the heading of defendants' book? A. That is correct.

8146

x Q. 132. In each instance, except the one on page 28, the second denominator was smaller than the first denominator? A. That is correct.

x Q. 133. And the use of the second denominator in calculating your Webster percentage made that percentage greater than it would have been if you had used the same denominator that you used in calculating the other percentage, is that correct? A. Correct.

8147

x Q. 134. The percentages then of the different books are calculated upon that different basis, is that correct? A. Yes.

x Q. 135. Upon what theory did you use the two different denominators in calculating the percentages? What was the reason for it? A. Because some of the words used in defendants' dictionary were not contained in Webster's.

x Q. 136. Was not the purpose of your calculations to ascertain what percentage of the defendants' entire book was contained in Webster, or was identical? A. That unfortunately is outside of my field; I have not done anything but computed.

8148

x Q. 137. According to instructions? A. And what the work was given me to do.

x Q. 138. Were you told to omit those words

8149

Francis M. Watrous—Cross.

which you did omit in defendants' dictionary in calculating your percentage with Webster? A. I was.

x Q. 138. The Webster percentage as given by you then does not represent the percentage of defendants' entire book as compared with Webster? A. No.

8150

x Q. 139. Did you compare the matter from Nuttall's dictionary which appears in the fifth column of page 30 of complainant's parallel column with Webster's 1847 edition? A. I did, yes.

x Q. 140. In your direct examination where you called attention to the changes between Nuttall's dictionary and the 1847 Webster's dictionary, did you state all the differences or variations which existed? A. All the differences or variations that I could find, yes.

8151

x Q. 141. Under the word "impulsion", that is the first word from the column of Nuttall's dictionary, on page 30 of Nuttall's dictionary, on page 30 of this exhibit, I do not find the following words which I read from the Webster's 1847 edition: "The sudden or momentary agency of a body in motion on another body." Why did you not call attention to that variation? A. Because the underlined words here are the ones which we are comparing with Nuttall; Webster includes a great many words; his definitions are more widespread, and there are many words in Webster's which Nuttall does not contain.

8152

x Q. 142. Your testimony then does not mean that Nuttall contains one hundred per cent. of Webster's matter under those words? A. Surely.

x Q. 143. (Question repeated) Your testimony then does not mean that Nuttall contains one

Francis M. Watrous—Cross.

8153

hundred per cent. of Webster's matter under those words? A. Shall I explain.

x Q. 144. Please explain? A. Nuttall contains one hundred per cent. Webster; everything in Nuttall is contained in Webster.

x Q. 145. But not everything in Webster is contained in Nuttall, is that what you mean? A. Webster is not nearly as abridged as Nuttall.

x Q. 146. Did you compare the underscoring of the words in the Nuttall column of this exhibit with the words in the corresponding definitions' of defendants' dictionary? 8154

MR. CARROLL: Objected to as irrelevant and immaterial.

A. No.

x Q. 147. You do not assert then that all of the matter underscored in Nuttall's column of this exhibit to indicate identity with corresponding definitions in the defendants' dictionary are not all the words that should be underscored? A. I have not investigated that matter at all. 8155

MR. HALE: That is all.

MR. CARROLL: That is all.

DEPOSITION CLOSED.
(Signature waived).

Adjourned to Wednesday, October 30th, 1912,
at two o'clock p. m. 8156

8157

Lauren Carroll—Direct.

NEW YORK, WEDNESDAY, OCTOBER 30TH, 1912.

2 o'clock P. M.

Met pursuant to adjournment.

Present: Counsel as before.

8158 LAUREN CARROLL, called as a witness on behalf of the defendants' in sur-rebuttal, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Carroll:

Q. 1. Name? A. Lauren Carroll.

Q. 2. Age? A. Mature.

Q. 3. Residence? A. 4 East 64th Street, New York City.

Q. 4. Occupation? A. Lawyer.

8159 The witness Mawson testified in answer to question 155 that page 32 of his parallel column exhibit proved that "The British Empire Dictionary contains between 49 per cent. and 50 per cent. of matter traceable to Johnson's dictionary in so far as the definitions are common to both books. By traceable I mean the language is identical." I have counted the words which appear in the column taken from the British Empire Dictionary on page 32, complainant's parallel column exhibit, and find that the words used in the definitions in that column number 157. There are 61 words marked as identical with Johnson. This gives a percentage of 39.5 per cent. instead of 50 per cent. of identity.

8160

I have also counted the words in defendants' dictionary as given on page 32 of complainant's parallel column exhibit, and find them to be 95 in number. I have also counted the words which are identical with Webster in this column as given

Lauren Carroll—Direct.

8161

on page 32 of said exhibit. The words in the matter taken from defendants' dictionary that are identical with Webster on said page 32 are 54 in number, which gives a percentage of identity between defendants' dictionary and Webster, so far as the matter contained on this page is concerned, amounting to 57 per cent. Every word which is marked in defendants' dictionary on said page 32 as being identical with Johnson's is also included in the definitions appearing on the page cut from Webster, with the exception of the one word "disproof", which may be considered an abbreviation of the following words used by Webster in his definitions: "Disproved," used twice, "disproving", and "to disprove". The following words are identical between defendants' dictionary and Webster's, and do not appear at all in Johnson's: Under "confraternity", the word "society". Under "confuse", "to disconcert", also "to render indistinct". Under "confute", "to prove to be false or invalid". All of these words are used in defendants' book in the definitions, and none of them appear in Johnson's. Also in defendants' definition of "conger", the adjective "large" is used. Webster also uses said adjective, and describes the animal at length. Johnson defines it merely as "the sea-eel".

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8163

A fair example of paraphrase which was not included in the percentage of identity between defendants' book and Webster will be found under the word "confuse". The two meanings given in defendants' definition, "to mingle, to jumble up", seem clearly to be paraphrased from the first two definitions given in Webster's. Similar meanings do not appear in Johnson's.

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On page 19 of complainant's parallel column exhibit, the witness Mawson should have under-

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Lauren Carroll—Cross.

lined in Webster's unabridged dictionary, and would have thereby increased the percentage of identity allowed between defendants' book and Webster's, the words "teraphim", "household deities or images" because the words are given in defendants' dictionary as follows: "Teraphim, household god or image." In this same definition Webster also gives "Heb.", an abbreviation for Hebrew. This should have been underlined for the reason that the word "Hebrews" appears in defendants' dictionary. This may seem of small moment, but inasmuch as there are only 158 words in defendants' book appearing on this page, the four or five words mentioned will make a difference in percentage of identity of three or four percent.

8166

I have not personally run through the other pages of this exhibit, and so cannot testify as to whether or not there are other similar mistakes in the other pages, and I do not testify on that subject one way or the other. This one mistake I came upon quite by chance.

S167

CROSS EXAMINATION by Mr. Hale:

8.68

x Q. 5. You have spoken of a count of identical words upon page 32 of this exhibit, and have calculated certain percentages. Did you follow Mr. Mawson's markings on that exhibit as indicating the identities? If not, what did you do? A. In computing the percentage of identity between the British Empire Dictionary and Johnson's I followed Mr. Mawson's markings. Mr. Mawson, however, had not marked identities between defendants' book and Webster's, so that there was nothing to follow in that particular.

x Q. 6. So you made a new count for yourself of defendants' book as compared with the Web-

ster's, appearing upon page 32 of this exhibit, in order to calculate said percentage? A. Not precisely. I had previously verified the words underlined by Mr. Mawson in defendant's book on page 32. These words were underlined by Mr. Mawson to indicate that they were identical with Johnson's. I found that each one of these words was also contained in Webster's, so that the count included these words, and also the words which I have already testified appear in Webster's, and do not appear in Johnson's.

8170

x Q. 7. But you in no way criticise Mr. Mawson's markings, underlinings and so forth upon page 32 of this exhibit? A. No.

x Q. 8. And so far as you know those markings are accurately made for the purpose for which he made them? A. So far as I know.

x Q. 9. You gave a list of certain words which you stated were in defendants' book and which were identical with Webster's, which do not appear in Johnson's, and made the remark that "all of these words appear in Webster and not in Johnson." Just what did you mean by that remark? A. I meant that no basis for these words or definitions can be found in Johnson, but that they are undoubtedly taken from Webster.

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x Q. 10. Because contained in Webster and not in Johnson, is that what you mean? A. That is the natural inference.

x Q. 11. Do you know whether or not any of these words appear in Cassell's dictionary? A. I do not.

8172

x Q. 12. You did not examine to see? A. I did not.

x Q. 13. Do you know whether they appear in any of the other dictionaries mentioned in this

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Lauren Carroll—Cross.

exhibit, and referred to by Mr. Mawson? That is to say, either Cassell's, Chambers, Ogilvie's, Nuttall's, and Stormonth's, Annandale's, Worcester's, Student's Standard, and Concise Oxford?

A. I have not got these books in my possession, and the matter appearing on page 32 of this exhibit which might perhaps have been found in part in some or other of the dictionaries named is not included in the other pages of the exhibit.

8174 Moreover I considered it immaterial, and therefore did not compare.

x Q. 14. I presume the principle which you have announced with special reference to Johnson would apply to all other dictionaries, with which defendants' book might be compared with equal validity? A. I have enunciated no principle.

8175 x Q. 15. If, for example, it should be found that defendants' dictionary contains in its definitions words identical with words found in Webster's corresponding definitions, and also that the same definitions in defendants' book contain words or other matter not contained in Webster's, but contained in some of these other dictionaries such as Cassell's or Chambers, would not that indicate or be a natural inference, to use your own phrase, that these other dictionaries had been used in the compilation of defendants' book? A. I understand that defendants' book states upon its title page that it is revised in accordance with the most recent English and American authorities, and I suppose that where words or definitions are not contained in Webster's dictionary, the editor of defendants' dictionary went to some other source.

MR. HALE: The answer is objected to as not responsive. Will you please repeat the question once more?

Lauren Carroll—Cross.

8177

(Question repeated by the stenographer.)

THE WITNESS: I gave no opinion on that matter before.

x Q. 16. You have stated in substance that it was an indication that Webster rather than Johnson had been used in the case of certain definitions in defendants' book, because those definitions contained words which were in Webster and not in Johnson. Why would that not be a valid rule for determining whether or not defendants' definitions were derived from other dictionaries, such as Cassell's or Chamber's dictionaries, where a similar state of facts exists? A. Please read the answer to which you refer.

8178

(Question and answer referred to read by the stenographer.)

THE WITNESS: Whatever rule counsel for complainant can derive from my earlier answer may be applied to the present question.

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x Q. 17. You have given evidence purporting to show that Webster's dictionary of 1847 was used in the compilation of defendants' dictionary. Do you mean to assert that defendants' dictionary was not directly copied in a very large part and to the extent of more than 90 per cent. from the British Empire dictionary, which is an exhibit in this case? A. That part of Mawson's testimony I have not gone into on my direct examination, and I therefore decline to answer that question.

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x Q. 18. Your testimony was on the subject matter of the words and origin of the literary matter contained in defendants' book. This question is precisely limited to that exact subject matter.

8181

Lauren Carroll—Cross.

The question is therefore repeated? A. I gave no opinion whatever in my direct examination as to the source or origin of defendants' book. I simply was correcting mistakes made by Mr. Mawson.

x Q. 19. Have you to any extent compared defendants' dictionary with the British Empire dictionary? A. No.

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x Q. 20. None whatever? A. Not to any extent.

x Q. 21. Just what do you mean by that? A. Exactly what I say.

x Q. 22. You made no comparison whatever? Is that what you mean to say? A. I have already answered that question, and inasmuch as this testimony must be printed by next Monday, I decline to answer it further.

DEPOSITION CLOSED.

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(Signature waived.)

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IT IS HEREBY STIPULATED between the parties hereto that the affidavits of C. O. Sylvester Mawson and of Helen Winifred Haskins, verified respectively upon the 18th day of October, 1912, giving the result of a count made by said affiants as therein stated, of matter in defendants' dictionary and of matter in the British Empire dictionary, shall be here inserted and deemed a deposition on behalf of the complainant, with the same force and effect as if the witnesses had been regularly called and examined by way of question and answer, the purpose of these affidavits being to correct

Lauren Carroll—Cross.

8185

certain errors pointed out in the previous counts appearing in the tables on pages 517 and 519 of complainant's printed record.

DEFENDANTS' TESTIMONY CLOSED.

(Printing of notice and of Examiner's certificate omitted by consent.)

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DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,*vs.*

8190

CUPPLES & LEON CO.,
Defendant.Equity No. 8-
161.G. & C. MERRIAM COMPANY,
Complainant,*vs.*

8191

THE SYNDICATE PUBLISHING COM-
PANY,
Defendant.Equity No. 8-
162.UNITED STATES OF AMERICA,
STATE OF MASSACHUSETTS,
County of Hampden,

} ss.:

8192 C. O. SYLVESTER MAWSON, being first duly
sworn, deposes and says:—

I am the C. O. Sylvester Mawson who testified in the above entitled cause in behalf of the complainant. In the course of that testimony I compared defendant's dictionary with the British Empire Dictionary, which I termed Price's Dictionary from the name of its author, with a view to showing the extent of identity between them, and

I presented the result of a count of the terms and definitions contained in those respective dictionaries in the form of tabular summaries, and the same appears in complainant's printed record upon pages 517 and 519 respectively. 8193

Subsequently I was informed by complainant's counsel that defendant claimed that my count was materially incorrect, and that defendant had obtained leave to reopen the case and take further testimony in rebuttal, partly for the purpose of correcting my count. Thereupon, at the request of complainant's counsel, I caused a new count to be made under my supervision by Miss Helen Winifred Haskins. This new count was carefully checked with my original count and in case of discrepancies between the two, the work was gone over two or three times. After this counting and checking was completed, I tested the figures of Miss Haskins at various points to make sure of accuracy, and I found the same correct. The figures resulting from the new count, made as aforesaid, together with the corresponding figures in my original count, are embodied in the following tables, which are correct to the best of my information and belief. 8194 8195

ANALYSIS

OF PRICE'S DICTIONARY AND WEBSTER'S NEW CENTURY DICTIONARY.

(Comparison of *Old* and *Revised* Figures.)

TERMS:

	No. of Terms in Price		Terms Common to PRICE & W. N. C. D.		Terms in PRICE not in W. N. C. D.		Terms in W. N. C. D. and not in Price.	
	<i>New Count</i>	<i>Old Count</i>	<i>New Count</i>	<i>Old Count</i>	<i>New Count</i>	<i>Old Count</i>	<i>New Count</i>	<i>Old Count</i>
A	3531	3875	2428	2941	1103	934	40	40
B	2418	2291	1992	1900	426	391	13	13
C	4270	4339	3051	3006	1219	1333	27	27
D	2129	2106	1701	1697	428	409	6	6
E	1507	1493	1273	1268	234	225	7	7
F	1761	1765	1461	1459	300	306	10	10
G	1414	1407	1105	1103	309	304	8	8
H	1423	1424	1122	1120	301	304	19	19
I	1640	1631	1408	1407	232	224	5	5
J	278	276	203	203	75	73	4	4
K	266	265	183	182	83	83	1	1
L	1106	1100	873	872	233	228	17	17
M	1787	1785	1481	1469	306	316	25	25
N	641	641	515	515	126	126	2	2
O	766	765	625	624	141	141	19	19
P	2962	2954	2425	2417	537	537	39	39
Q	216	216	179	179	37	37	0	0
R	1562	1557	1402	1400	160	157	12	12
S	3680	3665	3191	3185	489	480	35	35
T	1767	1758	1568	1564	199	194	17	17
U	235	235	199	199	36	36	2	2
V	619	612	543	543	76	69	4	4
W	624	626	576	576	48	50	6	6
X	36	36	31	31	5	5	2	2
Y	103	103	88	88	15	15	1	1
Z	125	213	94	182	31	31	2	2
	36866	37138	29717	30130	7149	7008	323	323

DEFINITIONS.

<i>Dissimilar Definitions.</i> More or Less Resembling PRICE			Containing Senses Not Covered in PRICE.		<i>Identical Definitions.</i> In PRICE and W. N. C. D.	
<i>New</i> Count	<i>Old</i> Count		<i>New</i> Count	<i>Old</i> Count	<i>New</i> Count	<i>Old</i> Count
A	21	21	8	8	2399	2912
B	4	4	6	6	1982	1890
C	18	15	5	4	3028	2987
D	8	8	5	5	1688	1684
E	6	6	5	5	1262	1257
F	13	13	17	17	1431	1429
G	4	4	3	2	1098	1097
H	4	4	4	3	1114	1113
I	17	17	4	4	1387	1386
J	1	1	8	8	194	194
K	4	4	4	4	175	174
L	9	9	10	10	854	853
M	16	16	17	18	1448	1435
N	11	11	11	11	493	493
O	2	2	11	11	612	611
P	29	29	26	26	2370	2362
Q	0	0	2	2	177	177
R	17	17	16	16	1369	1367
S	33	34	36	36	3122	3115
T	42	42	41	40	1485	1482
U	5	4	3	3	191	192
V	11	11	6	6	526	526
W	13	13	17	17	546	546
X	0	0	0	0	31	31
Y	0	0	4	4	84	84
Z	2	2	0	0	92	180
290		287	269	266	29158	29577

8205

SUMMARY.

COMPARISON OF OLD AND REVISED FIGURES.
Terms.

	Revised Figures	Old Figures
Number of terms common to W. N. C. D. and Price.....	29,717	30,130
Number of Price's terms not in W. N. C. D.....	7,149	7,008
8206 Total number of terms in Price	<hr/> 36,866	<hr/> 37,138
Number of terms common to both Price and W. N. C. D..	29,717	30,130
Number of terms in W. N. C. D. and not in Price.....	323	323
8207 Total number of terms in W. N. C. D.....	<hr/> 30,040	<hr/> 30,453
Percentage of terms in W. N. C. D. also appearing in Price	98.92	98.94
Percentage of terms in W. N. C. D. not appearing in Price	1.08	1.06
	<hr/> 100.00%	<hr/> 100.00%

8208

DEFINITIONS.

	Revised Figures	Old Figures
Number of definitions identi- cal with Price.....	29,158	29,577

Number more or less resembling Price (some having only a single word changed)	290	287	8209
Number containing new matter	269	266	
Number of new terms defined.	323	323	
	<hr/>	<hr/>	
	30,040	30,453	
Percentage of definitions similar to Price.....	98.02	98.06	
(viz. identical definitions more or less resembling	97.06 (97.12)	(97.12)	8210
	.96)	.94)	
	<hr/>	<hr/>	
	98.02	98.06	
Percentage of matter in W. N. C. D. not contained in Price	1.98	1.94	
	<hr/>	<hr/>	
	100.00%	100.00%	

It will be noted that the results of the new count are not materially different from the former count as already contained at pages 517 and 519 in the record. Such errors as crept into the original count were wholly inadvertent and were due, as I have ascertained, mainly to unskilful use of an adding machine by one unaccustomed to its manipulation. The errors, such as they were, largely offset each other, as will appear from the figures in the tables hereinbefore contained. The net result of the new count shows a variation of only one-fiftieth (1/50th) of one per cent. (1%) in the percentage of "terms in W. N. C. D. also appearing in Price" (viz.: new figures, 98.92%; old figures, 98.94%); and in the percentage of "terms in W. N. C. D. not appearing in Price" the variation is the same (viz.: new figures, 1.98%; old figures, 1.06%); in the percentage of "Definitions Similar to Price," the variation between the old

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8213 and the new figures is only one-twenty-fifth (1/25th) of one per cent. (1%) (viz., new figures, 98.02%; old figures, 98.06%); in the percentage of "matter in W. U. C. D. *not contained in Price*" the variation is also one-twenty-fifth (1/25th) of one per cent. (1%), (viz., new figures, 1.98%; old figures, 1.94%).

I was instructed that this count and these figures must be absolutely correct, and I believe that they are so, as far as humanly possible to make them. The books and figures, of course, speak for themselves.

C. O. SYLVESTER MAWSON.

Subscribed and sworn to before me }
this 18th day of October, 1912. }

CHARLES S. CLEAVES,
(SEAL) Notary Public,
Springfield, Massachusetts.

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DISTRICT COURT

8217

OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

vs.

CUPPLES & LEON Co.,
Defendant.

Equity No.
8-161.

8218

G. & C. MERRIAM COMPANY,
Complainant,

vs.

THE SYNDICATE PUBLISHING
COMPANY,
Defendant.

Equity No.
8-162.

8219

UNITED STATES OF AMERICA, }
State of Massachusetts, } ss.:
County of Hampden.

HELEN WINIFRED HASKINS, being first duly sworn, deposes and says: 8220

I am a stenographer employed by G. & C. Merriam Company, complainant in the above entitled cause. I have read the foregoing affidavit of C. O. Sylvester Mawson, verified the 18th day of October, 1912, and know the contents thereof, and the same is true except so far as matters are therein

- 8221 stated to be alleged upon information and belief, and as to those matters I believe it to be true. I carefully counted the terms and definitions as contained in the two dictionaries filed as exhibits and referred to by Mr. Mawson, and obtained the results contained in the table which is made a part of Mr. Mawson's foregoing affidavit, which figures appear in the column headed "New Count." I exercised the greatest care in counting and adding these figures, and I believe them to be absolutely correct.
- 8222

HELEN WINIFRED HASKINS.

Subscribed and sworn to before me)
this 18th day of October, 1912. }

CHARLES S. CLEAVES,
(SEAL) Notary Public,
Springfield, Massachusetts.

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8224

Opinion of Judge Hand on Final Hearing.

8225

UNITED STATES DISTRICT COURT,**SOUTHERN DISTRICT OF NEW YORK.****G. & C. MERRIAM COMPANY,****VS.****SYNDICATE PUBLISHING COMPANY.****E 8-162.**

8226

G. & C. MERRIAM COMPANY,**VS.****CUPPLES & LEON COMPANY.****E 8-161.**

These are two suits in equity to secure an injunction and accounting against the defendants for the publication of two certain dictionaries, one under the title of "Webster's New Standard Dictionary," published by the Syndicate Company, and the other under the title of "Webster's New Century Dictionary," published by the Cupples & Leon Company. Each of these books is substantially taken from the same plates and the differences between them are few, though the "Century" has been less changed than the "Standard." They are each printed from a dictionary entitled "The Crown Dictionary," the origin of which is one of the points of dispute in the case.

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The complainant has since 1847 continuously published dictionaries which were either themselves revisions, abridgments or reductions of the work of Noah Webster, the well-known lexicographer, or of previous revisions of that work. The chief editions were published in 1847, 1864, 1890 and 1909. The theory of the suits is, that the

8228

8229 *Opinion of Judge Hand on Final Hearing.*

name "Webster," when applied to a dictionary at the present time, signifies to buyers throughout the country that the work is a compilation or abridgment published by the complainant company, which is either known by name, as the publisher, or whose identity is established in popular opinion as the publisher for many years singly responsible for all Webster's dictionaries. These suits were commenced in November, 1911. In October of that year the defendant, Syndicate Company, informed the complainant that there would be thereafter inserted in the title page the statement which had been required by the decree of the Circuit Court of Appeals for the First Circuit in a similar case against one Ogilvie, and that on the back of the dictionary would appear the name of the Syndicate Company. The defendant, Cupples & Leon Company, inserted the statement upon the title page early in November, 1911, and so informed the complainant; it had always, with one exception, printed its name on the back. The complainant not being satisfied with these concessions, brought this suit.

WILLIAM B. HALE, for the complainant.

HUGH A. BAYNE and HARRY D. NIMS for the defendants.

8232 HAND, *D.J.*: The complainant has never succeeded in getting from any court a decree which would forbid the publication of a "genuine" Webster dictionary in the form in which the defendants were selling theirs at the time these suits were started. The defendants had not only conformed in every way to the terms of the decree in the case of Merriam v. Ogilvie, as it was finally entered, but they had advised the complainant of their submission to the law as there laid down and of their purpose in future to adhere to it.

Opinion of Judge Hand on Final Hearing. 8233

The complainant brings this suit upon the theory that the book published (for the two books are nearly identical in content) is in fact not based upon Webster's dictionary at all, that it has no right to be called Webster's Dictionary in any sense, and that it is a fraud to call it such. Indeed, they do not concede that anyone has any right but themselves to use the word "Webster's" upon a dictionary, unless it be one of the original dictionaries published by Webster himself, and even in that case they insist that it must be distinguished by the statement that it is one of the original Webster's dictionaries, a fact which would probably destroy any possibility of its sale anyway. Their pretention extends even to the point of forbidding the sale of any dictionary honestly compiled upon Webster's original sources, since they assert that the name "Webster," when applied to any such compilation or abridgment, necessarily implies their own responsible supervision and authorship. I have not, however, the least doubt at the outset in overruling so extreme an assertion as this. It is quite clear that any honest compilation or abridgment at the present time of Webster's work is entitled to describe itself as such and that the most which the complainant's supposed right could in any case do, would be adequately to indicate that a work so described was not a compilation or abridgment by the original publishers of Webster's Dictionary or their successors. Indeed, it is a preposterous assertion to say that the name "Webster's" as at present used by the complainants themselves does not indicate to the public mind that their work has some connection with Webster's original work other than that they choose to publish it, or that it need not be the result of a legitimate literary descent from his original. In other words, even though the word indicates *prima facie* that the

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8237 *Opinion of Judge Hand on Final Hearing.*

book is the complainant's compilation, it also still indicates that it is a compilation with Webster as its original source, and it is in this sense that Judge C'oxe spoke when he said that the word had two meanings, a proprietary and a descriptive. Nor is there any inconsistency in such a dual meaning; the word may mean "Merriam's compilation from Webster," quite as well as "Merriam's Com-
 8238 pilation." If it does, it must as well answer to one part of its definition as to another; in short, it must be a compilation from Webster, or it is a fraud. I pay not the least attention to those witnesses who say that it means only "Merriam's Compilation." If the name "Webster" has this descriptive significance, it is quite clear that it will also honestly describe any actual compilation from any one of Webster's dictionaries, provided that some suffix be added to distinguish the compilation from Merriams. The word need not by any means
 8239 be confined to the original work of Webster himself. Indeed, the only authority which has ever independently given the complainant any trade rights in the name, "Webster," itself refused absolutely to forbid the defendant from using the name upon what was in every sense a compilation. In *Merriam v. Ogilvie*, 149 Fed. R., 860, Judge Colt says that Ogilvie's work was an enlarged and revised edition of the Webster of 1847. Now the edition of 1847 was not by any means a Simon-pure
 8240 Webster, for its title page asserts that although it contained the whole vocabulary of the first edition in two volumes, the entire corrections and improvements of the second edition (both by Noah Webster), it had been revised and enlarged by Chauncey A. Goodrich. Just what the abridgment from two volumes to one involved and just what was the revision and enlargement of Goodrich which accompanied the abridgment added does not appear, but it does appear that the work which the

Opinion of Judge Hand on Final Hearing.

824E

Circuit Court of Appeals of the First Circuit permitted to bear the name "Webster" had passed through two revisions of one sort or another, and this is enough to dispose of the assertion that the only work which may be called "Webster" is some book just as it left the hands of Noah Webster.

The first question, therefore, which arises is, whether the dictionary in question was based upon Webster's original work in such sense that it is entitled to be known by that name. In the solution of this question I am not disposed to enter into any nice considerations of a literary character, such, for example, as Professor Peck suggests, as to what creates a Webster's dictionary. For it is quite clear that whatever scholars may think, the public generally—and it is the public with whom we are now concerned—mean something else by the words in question. What is it that they do mean, either by a Webster's Dictionary or a dictionary based upon Webster's? It seems to me that they mean the way the book has been made up more than its present contents, its history rather than its present identity with its source. The word at least denotes what I should call literary descent from Webster's original books; that is, that each book in the series of which this is the last, was made up by its author with its predecessor before him, only changing the spelling, definition, vocabulary and the rest as his opinions, and learning, indicated to him that changes were required to adapt the book to the present; and that this succession goes back without break to some work by Webster himself. Nor is it indeed possible for the complainant to take any other position than this without putting themselves in the position of foisting upon the public a spurious work. Their own last edition, that of 1909, is a book of almost totally different literary contents from any book with which Noah

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8245 *Opinion of Judge Hand on Final Hearing.*

Webster had anything to do. They have the alternative of accepting the definition of "Webster" as indicating this kind of descent, or of maintaining that "Webster" means any work of theirs and has no descriptive significance whatever. Otherwise they are within the rule in the California Fig Syrup case. Of course, a "Webster" dictionary must own Webster as its father originally; and in the case at bar, although the heredity of the complainants' 1909 Webster is all that gives it its character as a Webster, yet it still has that character, remote now as the content may be. The complainant is in no position to deny a purely descriptive use of the word to any other dictionary which is as legitimate as its own. The constant iteration that all such are "bogus," or not "genuine," is merely a childish extravagance.

Now does the defendants' book answer this description as well as the complainant's? The complainant has established beyond any question, in my judgment, that the immediate basis of the Crown Dictionary was the British Empire Dictionary, which has been put in evidence in this case, and which was edited by the Rev. E. D. Price, F. G. S. The proof of this consists in the identity of the literary matter between the two, which is so great as to be substantially identical. The parties in taking testimony have proceeded upon the assumption that the kinship between dictionaries may be ascertained by examining the verbal identities in the contents. Thus, at what must have been an appalling labor they have each prepared tables showing the identity of subject matter between the defendants' book and others. It so happens under the complainant's table, that of all those examined the closest in content to the British Empire Dictionary is Ogilvie's Imperial Dictionary of 1883. The similarity of contents extends to 70% of literal identity; that is to say,

70% of the contents of the British Empire Dictionary appears verbatim in the Imperial. The identity in the case of the Concise Oxford is only 28% and of what I am tempted to call the non-Websterian group, ranges from there to about 40%. Considering the difference in time of their appearance this identity with the Imperial is adequate *prima facie* proof that the former is the literary descendant of the other, and in the absence of contradiction, justifies me in so assuming, when compared with the extremely low percentages of the other more or less contemporaneous works. Certainly one who advertises that work as a Webster which has scarcely any of Webster's matter within its covers cannot afford to be too meticulous. It also so happens that the first edition of the Imperial Dictionary published in 1850 is in evidence written by the well-known lexicographer, John Ogilvie. The title page of this work says that it is "On the basis of Webster's English Dictionary," while the preface, dated December, 1849, more fully states the sources. Thus, on page III of this preface appears the following: "In adopting Webster's dictionary as the basis of the Imperial dictionary, the great object of the editor in preparing the latter has been to correct what was wrong and to supply what was wanting in Webster in order to adapt the new work to the present state of literature, science and art. Accordingly, every page of Webster has been subjected to careful examination, numerous alterations and amendations have been made, a vast number of articles have been re-written, very many of Webster's explanations of important terms have been enlarged and many new and correct definitions of others given; new senses have been added to old words where they were found wanting, and a multitude of new words and terms have been introduced, especially in the scien-

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8253 *Opinion of Judge Hand on Final Hearing.*

tific and technological departments, so that to Webster's addition of twelve thousand to Todd's Johnson, a further addition has been made of at least fifteen thousand words and terms."

- 8254 Now that is exactly what I think the public means by a "Webster" brought up to the time of its publication, and it is in exactly this sense, and only in this sense, that the complainant has any right to continue to call its present dictionaries "Webster's," whether or not it indicates the complainant's own compilations when not accompanied by any suffix. Certainly Ogilvie could have called the Imperial Dictionary either "Ogilvie's Webster" or the "Imperial Webster," or any other kind of "Webster" that he wished. The successive editions certainly were Webster dictionaries and so were any smaller works, derived from those editions, whether abridgments, condensations, or the like. Nor does it seem to me to
- 8255 matter that the intermediate sources did not go by the name Webster. Here, for example, is a work which comes down by precisely the same kind of line of descent from Webster that the complainant's present abridgments come, each individual in the line being formed from its predecessor by some accretion, some elimination, some amendment, till one reaches the work of Webster himself. When the public uses "Webster" does it understand that all the intermediate steps shall
- 8256 have been so named? I hardly think so. Rather, it seems to me, it is the fact of its unbroken descent that the word implies. Rolfe, a concededly fair witness, was asked his opinion upon this question, and, while I should not feel in the least bound by it, I should be very glad to give it weight, if I could understand what he meant by his answers: He says it would justify the use of the title "Webster's dictionary" if the book were taken from Ogilvie; that is if Ogilvie could

Opinion of Judge Hand on Final Hearing. 8257

be called an English Webster, but that though justifiable it was not a natural thing to do, and that he, personally, from a literary point of view, should not use it. So far as this means anything, it is that in the witness' opinion the name could honestly be used. Therefore, I believe that the defendants have shown that their dictionary is really a Webster entitled to be so called quite as much as the Ogilvie's in the suit of *Merriam v. Ogilvie*. Are the statements in Ogilvie's preface competent as evidence? 8258

Ogilvie's preface is of course an unsworn statement, and as such only hearsay testimony, which may be admitted only as an exception to the general rule. The question is whether there is such an exception. I have been unable to find any express authority in point and must decide the question upon principle. In the first place, I think it fair to insist that to reject such a statement is to refuse evidence about the truth of which no reasonable person should have any doubt whatever, because it fulfills both the requisites of an exception of the Hearsay Rule, Necessity and Circumstantial Guarantee of Trustworthiness, Wigmore, Secs. 1421, 1422, 1690. As to Necessity, it is a statement made by a man now dead about his own conduct in the compilation of his own work. I say he is dead because he had completed a large dictionary some sixty-three years ago, and it is a fair presumption that he was at least thirty-seven years old when the work appeared. Moreover, the Dictionary of National Biography, which is certainly the standard work upon the subject, gives the date of his death as 1867. Besides Ogilvie, everyone else is dead who ever knew anything about the matter and could intelligently tell us what the fact is. It is true that internal evidence remains, but this very case shows that it is hard to be 8259 8260

8261 *Opinion of Judge Hand on Final Hearing.*

certain in one's inferences from it. If this be not evidence I can see no way of getting any better, and the fact cannot be established at all. Surely the law is not so unreasonable as that.

As to the Trustworthiness of the testimony, it has the guarantee of the occasion, at which there was no motive for fabrication. A claim of originality might be suspicious, but one of obligation is not. Whether Ogilvie claimed as his
8262 source Johnson or Webster, was not a matter which he would be likely to misstate. Ogilvie was a lexicographer of note and the "Imperial Dictionary" was for long one of the standards of English speech, and there is in reason every ground for accepting as presumptively true a statement of this kind made at this time and place. The evidence is not conclusive as matter of law, a circumstance which many judges seem to forget in discussing the dangers of unsworn
8263 testimony. Ogilvie may of course have been a malingerer; he may have been employed by unscrupulous publishers to assert a derivation which was untrue, but such considerations would operate to exclude nearly all testimony ever given in a court of law.

In spite of these considerations, however, if there be any absolute rule of law that forbids such proof, I may not regard it, whether or not I like the results. Now it is perfectly well settled that
8264 courts will use dictionaries and other reliable works of reference as occasion may require, *Brown v. Piper*, 91 U. S., 37; *Nix v. Hedden*, 149 U. S., 304; *Western Assurance Co. v. Mohlman Co.*, 83 Fed. R., 811 (C. C. A., 2nd Cir.); *Koechle v. U. S.*, 84 Fed. R., 448 (C. C. A., 2nd Cir.). They are accepted because the circumstances attending their preparations guarantee their reliability, but they remain none the less unsworn statements of fact or opinion. In the case at bar, Ogilvie's

Opinion of Judge Hand on Final Hearing.

8265

definitions and spellings, which are only his opinions as to what English usage then permitted, would certainly be accepted in any court, and the only way in which I can rationally exclude his statement of the sources from which those opinions proceeded, is by finding some ground in reason for distrusting the one which does not apply to the other. There is no such ground, and the admissibility of the work as a reliable authority must carry with it the explanatory portions. It may be that on authority a statement quite disconnected with the book's substance would not go in, irrational though that result might be. Thus if Ogilvie had put in his preface that he married at the age of thirty, authority might rule it out, but if the law admits his learned opinions at all, it would, in my judgment, be quite absurd to refuse also to admit his statement about their derivation. That one should admit his conclusions as reliable, but not his statements of the means by which he reached them, is more of a strain than the law of evidence can carry. 8266

The attitude of the Circuit Court of Appeals for the Second Circuit upon such questions is liberal, rather than narrow, *Western Assurance Co. v. Mohlman Co.*, *supra*, 820, 821. Wigmore, Secs. 1691-1701, while recognizing that upon authority the matter is doubtful, takes, as he always does, a wise and rational view towards such proof. I can find no controlling authority which requires me to reject the statements as evidence, and I shall accept them as such. 8267

Therefore, the defendants had the qualified right to call their books "Webster's," provided they properly distinguished so as to cut out the secondary meaning, and the only question which can remain is, whether the statement upon the title page of the books is sufficient notice, since the books were properly marked upon the back. The

8269 *Opinion of Judge Hand on Final Hearing.*

form of the notice is that set forth in the final decree of the Circuit Court for the District of Massachusetts, as contained in 190 Fed. R., at page 931. The only criticism which I can make upon the printing at the top of the page is that it is in rather small type. Had the attitude of the complainant been different when the defendants approached it with a view of adopting their make-up to the terms of the Massachusetts decree, I might now be willing to take up the question whether that notice ought not to be more conspicuous upon the page, but I am not disposed to indulge this complaint in such a way in the case at bar. When the defendants each approached its officers in a bona fide effort to accommodate themselves to the utmost rights which the complainant had up to that time enjoyed, they were met with a demand for absolute discontinuance of the name; they are met with it here. This was 8270 illegal and had been so adjudged against this complainant in the very decree which is the basis of any supposed right they may have in the name "Webster." They certainly by such a claim absolved the defendants from any nice adaptation of their typography to the terms of that decree, and I shall not inquire whether it gives the fullest protection to which the complainant is entitled.

I have decided this case upon the assumption that the word, "Webster," had acquired a secondary meaning indicating at once the derivation 8272 of the work and its responsible compiler. That assumption I make in deference to the decision in the First Circuit, though it is in no sense authoritatively binding upon me. There are several reasons why, if it were necessary, I should not hesitate to re-examine that question of fact. In particular the defendant in that case did not contest the question, at least, after the first decision, as his briefs show, nor did he contest it in the

Opinion of Judge Hand on Final Hearing. 8273.

case in the Sixth Circuit. Moreover, the record must have been quite different in that case, for Judge Colt could say that no one but the complainant published any Webster dictionaries between 1847 and 1889, a fact abundantly disproved in the case at bar. I need not here decide the question of secondary meaning, and I accept, since it has not been necessary to question it, the result of the decision in the First Circuit, which is the first success the complainant has ever had in its long and persistent efforts to establish a monopoly over the word "Webster." Nevertheless, this case can never be truthfully cited as in the slightest degree contributing to the establishment of that result, or indicating that I assent in any way to the claim of secondary meaning. That question I leave exactly as I find it, without deciding that the meaning exists, that it does not exist, that it has been proved, or that it has not been proved. 8274

I have looked over all the advertisements of the Syndicate Publishing Company, which make a very shoddy kind of appeal, but after the date when the defendants attempted to come to terms with the complainant they appear usually to bear the addition which the complainant procured as the measure of its relief in the Ogilvie case. As to those which do not and which for the most part are in the form of news articles, I find no evidence to contradict the *bona fides* of the defendant's efforts to conform the advertisement with the decree and I am not disposed to charge them with such as continued to appear. The prominence and form of the suffix must be held satisfactory in view of the complainant's attitude towards the defendant when approached, and its illegal claim of a monopoly in the name. If the defendant was content to yield to the terms of the Ogilvie decree, it might upon the complainant's demand have been subject to some modifi- 8275 8276

8277 *Opinion of Judge Hand on Final Hearing.*

cation of its advertisements as of its title page. That right justified no such proceeding as this, designed to do just what the complainant was forbidden to do in the First Circuit.

8278 As to the Cupples & Leon Company, I am in more doubt, the testimony of Leon is of very unsatisfactory character and his claims to a dictionary upon which the defendant had done any substantial work, are not justified. The advertisements are not warranted by the facts, for it is in no sense the modern book it professes to be. I do not believe that the defendant knew or in the least cared what was its contents, if it would sell as an up-to-date book. However, that gives no rights to the complainant, so long as its own limited use of the name is not infringed. None of the advertisements attempt to pass off the books as the complainant's, and it cannot object that the public is buying as a modern Webster substantially the old Crown Dictionary. The law may some day protect one man who sells a sound quality of goods so described against another who sells an unsound quality, dishonestly described, but it has not done so yet. Now we trust to the public to find out that they have been hoodwinked, and to distinguish. Moreover, it does not certainly appear that the defendant is responsible for its customers' advertisements.

8279 Both bills will be dismissed with costs.

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Final Decree.**8281**

At a stated term of the United States District Court for the Southern District of New York, held in the Court House, Borough of Manhattan, City of New York, on the 31st day of December, 1912.

Present—Hon. LEARNED HAND,

District Judge.

8282

G. & C. MERRIAM COMPANY,

VS.

CUPPLES & LEON COMPANY.

E 8-161.

This cause came on to be further heard at a term of this Court, held in the Borough of Manhattan, on the 3rd day of December, 1912, and was argued by counsel, and thereupon, upon consideration thereof, it is **8283**

ORDERED, ADJUDGED AND DECREED that the Bill of the Complainant herein be and the same is hereby dismissed upon the merits. And it is

FURTHER ORDERED, ADJUDGED AND DECREED that the complainant, G. & C. Merriam Company, do pay to defendant, Cupples & Leon Company, the sum of **8284**

and

its costs as taxed by the Clerk of this Court, and that the defendant, Cupples & Leon Company, do have execution therefor.

LEARNED HAND,

D. J.

(Filed Jan. 6th, 1913.)

8285

Final Decree.

At a Stated Term of the United States District Court for the Southern District of New York, held in the Court House, Borough of Manhattan, City of New York, on the 31st day of December, 1912.

8286 Present—Hon. LEARNED HAND,
District Judge.

G. & C. MERRIAM COMPANY,

VS.

SYNDICATE PUBLISHING COMPANY

E 8-162.

8287

This cause came on to be further heard at a term of this Court, held in the Borough of Manhattan, on the 3rd day of December, 1912, and was argued by counsel, and thereupon, upon consideration thereof, it is

ORDERED, ADJUDGED AND DECREED, that the Bill of Complaint of the complainant herein be and the same is hereby dismissed upon the merits. And it is

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FURTHER ORDERED, ADJUDGED AND DECREED that the complainant, G. & C. Merriam Company, do pay to defendant, Syndicate Publishing Company, the sum of

and its costs as taxed by the Clerk of this Court, and that the defendant Syndicate Publishing Company, do have execution therefor.

LEARNED HAND,

D. J.

(Filed Jan. 6th, 1913.)

Petition for Appeal.

8289

**DISTRICT COURT OF THE UNITED
STATES,****SOUTHERN DISTRICT OF NEW YORK.****G. & C. MERRIAM COMPANY,
Complainant,****VS.****CUPPLES & LEON Co.,
Defendant.**Equity No.
8-161.
Petition
for Appeal.

8290

The G. & C. Merriam Company, complainant above named, feeling itself aggrieved by the decree heretofore made and entered by this Court in this cause on, to wit, the 6th day of January, 1913, dismissing the Bill of Complaint herein upon the merits, with costs, hereby appeals from said decree to the Honorable the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and it prays that its appeal may be allowed, and that a citation issue directed to the above named defendant, Cupples & Leon Co., commanding it to be, and appear before the said United States Circuit Court of Appeals for the Second Circuit, upon the return day thereof, and that a transcript of the record, duly authenticated, may be transmitted to said United States Circuit Court of Appeals for the Second Circuit, and also that an order be made fixing the amount of security which said complainant shall give and furnish upon said appeal, and that upon the giving of such security, all further proceedings in this Court be suspended until the determination of said appeal by said United States Cir-

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Assignment of Errors.

cuit Court of Appeals for the Second Circuit, to the end that said decree of this Court may be reversed and such decree made as to said United States Circuit Court of Appeals for the Second Circuit may seem just.

Dated, January 6th, 1913.

8294

WILLIAM B. HALE,
Solicitor and Counsel for Complainant,
No. 40 Wall Street,
Borough of Manhattan,
New York City.

Assignment of Errors.

DISTRICT COURT OF THE UNITED
STATES,

8295

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant,

VS.

CUPPLES & LEON Co.,
Defendant.

8296

Equity
No. 8-161.

Assignment
of Errors.

Now comes the above named G. & C. Merriam Company, the complainant and appellant herein, and says, that in the record and proceedings of said Court herein, and in the decree made and entered herein on the 6th day of January, 1913, there is manifest error in this, to wit: -

1. The Court erred in dismissing the bill of complaint herein.

Assignment of Errors.

8297

2. The Court erred in not granting a decree for complainant herein in accordance with the prayer of the bill.

3. The Court erred in holding that defendant might lawfully publish and sell a copy of the English "British Empire Dictionary," under the name and description of "Webster's New Century Dictionary," and in failing and refusing to enjoin defendant's use of the latter title, or any equivalent thereof. 8298

4. The Court erred in failing and refusing to grant an injunction against the use of the name "Webster" in the title of defendant's said dictionary.

5. The Court erred in finding and deciding that defendant's said dictionary was based upon, abridged from, or a revision of, any prior Webster's dictionary. 8299

6. The Court erred in failing and refusing to grant an injunction against defendant's use of the name "Webster" unless accompanied by a plain and unmistakable statement correctly indicating the identity of defendant's said dictionary, and its origin with defendant, or other person, as distinguished from origin with complainant.

7. The Court erred in failing and refusing to find and decree that the titles of defendant's dictionaries are an unlawful infringement and imitation of the prior titles of complainant's dictionaries. 8300

8. The Court erred in failing and refusing to grant an injunction restraining defendant from passing off its said dictionaries as and for dic-

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Assignment of Errors.

tionaries of complainant, and from attempting so to do.

9. The Court erred in finding and deciding that defendant's adoption and use of an alleged distinguishing statement shortly prior to the filing of the bill herein, justified the refusal of any injunction.

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10. The Court erred in holding that defendant had sufficiently distinguished its books from those of complainant.

11. The Court erred in failing and refusing to find that defendant had infringed all or any of complainant's registered trade-marks, and in failing and refusing to enjoin said infringement.

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12. The Court erred in failing and refusing to enjoin defendant's fraudulent and deceptive advertisements.

13. The Court erred in failing and refusing to require defendant to account to complainant for damages and profits by reason of defendant's unlawful acts.

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WHEREFORE, complainant and appellant prays that the said decree of said District Court of the United States for the Southern District of New York, for the errors aforesaid, be reversed, and that said Court be instructed to enter a decree in favor of complainant for an injunction and an accounting in accordance with the prayer of the Bill of Complaint, or for such other relief as may be just.

Dated, January 6th, 1913.

WILLIAM B. HALE,

Solicitor and Counsel for Complainant.

Order Allowing Appeal.

8305

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the courtroom of said Court, in the Post Office Building, in the Borough of Manhattan, City of New York, in said Southern District, on the 7th day of January, 1913.

8306

Present—Hon. LEARNED HAND,
District Judge.

G. & C. MERRIAM COMPANY,
Complainant,

VS.

CUPPLES & LEON CO.,
Defendant.

Equity
No. 8-161.
Order
Allowing
Appeal.

8307

On reading and filing the petition for appeal of G. & C. Merriam Company, the complainant herein, and the assignment of errors made and filed herein by said complainant, and upon motion of William B. Hale, solicitor for said complainant, it is

ORDERED that an appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree heretofore made, entered and filed herein on the 6th day of January, 1913, be, and the same hereby is, allowed, and a citation is directed to issue, and that a transcript of the record be forthwith transmitted to said United States Circuit Court of Appeals for the Second Circuit; and it is further

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ORDERED that the amount of the security on ap-

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Petition for Appeal.

8310 peal to be furnished by said G. & C. Merriam Company, complainant, be, and the same hereby is, fixed at the sum of One thousand dollars (\$1,000.00), and that upon the making and filing with the clerk of this court of a good and sufficient bond in the said sum by the said G. & C. Merriam Company, with good and sufficient surety, all further proceedings in this court be suspended and stayed until the final determination of said appeal by the said United States Circuit Court of Appeals for the Second Circuit.

LEARNED HAND,
United States District Judge.

Petition for Appeal.

8311

DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

VS.

8312 THE SYNDICATE PUBLISHING COM-
PANY,
Defendant-Respondent.

Equity
No. 8-162.
Petition
for Appeal.

The G. & C. Merriam Company, complainant above named, feeling itself aggrieved by the decree heretofore made and entered by this Court in this cause on, to wit, the 6th day of January, 1913, dismissing the Bill of Complaint herein upon

Petition for Appeal.

8313

the merits, with costs, hereby appeals from said decree to the Honorable the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and it prays that its appeal may be allowed, and that a citation issue directed to the above-named defendant, The Syndicate Publishing Company, commanding it to be and appear before the United States Circuit Court of Appeals for the Second Circuit, upon the return day thereof, and that a transcript of the record, duly authenticated, may be transmitted to said United States Circuit Court of Appeals for the Second Circuit, and also that an order be made fixing the amount of security which said complainant shall give and furnish upon said appeal, and that upon the giving of such security, all further proceedings in this court be suspended until the determination of said appeal by said United States Circuit Court of Appeals for the Second Circuit, to the end that said decree of this Court may be reversed and such decree made as to said United States Circuit Court of Appeals for the Second Circuit may seem just.

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Dated, January 6th, 1913.

WILLIAM B. HALE,
Solicitor and Counsel for Complainant,
No. 40 Wall Street,
Borough of Manhattan,
New York City.

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Assignments of Error.**DISTRICT COURT OF THE UNITED
STATES,****SOUTHERN DISTRICT OF NEW YORK.**

8318

**G. & C. MERRIAM COMPANY,
Complainant-Appellant,****vs.****THE SYNDICATE PUBLISHING COM-
PANY,
Defendant-Respondent.****Equity
No. 8-162.
Assignments
of Error.**

8319

Now COMES the above named G. & C. Merriam Company, the complainant and appellant herein, and says, that in the record and proceedings of said Court herein, and in the decree made and entered herein on the 6th day of January, 1913, there is manifest error in this, to wit:

1. The Court erred in dismissing the bill of complaint herein.

2. The Court erred in not granting a decree for complainant herein in accordance with the prayer of the bill.

8320

3. The Court erred in holding that defendant might lawfully publish and sell a copy of the English "British Empire Dictionary" under the name and description of "Webster's New Standard Dictionary," and in failing and refusing to enjoin the defendant's use of the latter title, or any equivalent thereof.

4. The Court erred in failing and refusing to grant an injunction against the use of the name

Assignments of Error.

8321

“Webster” in the title of defendant’s said dictionary.

5. The Court erred in finding and deciding that defendant’s said dictionary was based upon, abridged from, or a revision of, any prior Webster’s Dictionary.

6. The Court erred in failing and refusing to grant an injunction against defendant’s use of the name “Webster” unless accompanied by a plain and unmistakable statement correctly indicating the identity of defendant’s said dictionary, and its origin with defendant, or other person, as distinguished from origin with complainant. 8322

7. The Court erred in failing and refusing to find and decree that the titles of defendant’s dictionaries are an unlawful infringement and imitation of the prior titles of complainant’s dictionaries. 8323

8. The Court erred in failing and refusing to grant an injunction restraining defendant from passing off its said dictionaries as and for the dictionaries of complainant, and from attempting so to do.

9. The Court erred in finding and deciding that defendant’s adoption and use of an alleged distinguishing statement shortly prior to the filing of the bill herein, justified the refusal of any injunction. 8324

10. The Court erred in holding that defendant had sufficiently distinguished its books from those of complainant.

8325

Assignments of Error.

11. The Court erred in failing and refusing to find that defendant had infringed all or any of complainant's registered trade-marks, and in failing and refusing to enjoin said infringement.

12. The Court erred in failing and refusing to enjoin defendant's fraudulent and deceptive advertisements.

8326

13. The Court erred in failing and refusing to require defendant to account to complainant for damages and profits by reason of defendant's unlawful acts.

8327

WHEREFORE, complainant and appellant prays that the said decree of said District Court of the United States, for the Southern District of New York, for the errors aforesaid, be reversed, and that said Court be instructed to enter a decree in favor of complainant for an injunction and an accounting in accordance with the prayer of the Bill of Complaint, or for such other relief as may be just.

Dated, January 6th, 1913.

WILLIAM B. HALE,
Solicitor and Counsel for Complainant.

8328

Order Allowing Appeal.

8329

At a stated term of the District Court of the United States for the Southern District of New York, held at the courtroom of said court, in the Post Office Building, in the Borough of Manhattan, City of New York, in said Southern District, on the 7th day of January, 1913.

8330

Present—Hon. LEARNED HAND, District Judge.

G. & C. MERRIAM COMPANY, Complainant,	}	
VS.		
THE SYNDICATE PUBLISHING COM- PANY,		
Defendant.		

Equity
No. 8-162.
Order
Allowing
Appeal.

8331

On reading and filing the petition for appeal of G. & C. Merriam Company, the complainant herein, and the assignment of errors made and filed by said complainant, and upon motion of William B. Hale, solicitor for said complainant, it is

ORDERED that an appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree heretofore made, entered and filed herein on the 6th day of January, 1913, be, and the same hereby is, allowed, and a citation is directed to issue, and that a transcript of the record be forthwith transmitted to said United States Circuit Court of Appeals for the Second Circuit; and it is further

8332

ORDERED that the amount of the security on ap-

8333

Appeal Bonds.

peal to be furnished by said G. & C. Merriam Company, complainant, be, and the same hereby is, fixed at the sum of One thousand dollars (\$1,000.00), and that upon the making and filing with the Clerk of this court of a good and sufficient bond in the said sum by the said G. & C. Merriam Company, with good and sufficient surety, all further proceedings in this court be suspended and stayed until the final determination of said appeal by the said United States Circuit Court of Appeals for the Second Circuit.

8334

LEARNED HAND,
United States District Judge.

Appeal Bonds.

[Appeal bonds in each case were approved and filed on Jan. 7, 1913. Printing of bonds is omitted by consent.]

8335

8336

Citation on Appeal.

8337

BY THE HONORABLE Judges of the DISTRICT COURT
OF THE UNITED STATES, for the SOUTHERN
DISTRICT OF NEW YORK, in the SECOND CIR-
CUIT.

To Cupples & Leon Co., a corporation, GREETING :

YOU ARE HEREBY CITED and admonished to be
and appear before a UNITED STATES CIRCUIT
COURT OF APPEALS for the Second Circuit, to be
holden at the Borough of Manhattan, in the City 8338
of New York, in the District and Circuit above
named, on the 5th day of February, 1913, pur-
suant to an appeal filed in the Clerk's office of
the District Court of the United States for the
Southern District of New York, wherein G. & C.
Merriam Company, a corporation, is complainant
and appellant, and you are defendant and appel-
lee, to show cause, if any there be, why the final
decree in said cause mentioned should not be
corrected and speedy justice should not be done 8339
in that behalf.

GIVEN UNDER MY HAND at the Borough of
Manhattan, in the City of New York,
in the District and Circuit above
named, this 7th day of January, in the
year of our Lord One Thousand Nine
Hundred and Thirteen, and of the In-
dependence of the United States the
One Hundred and Thirty-seventh.

LEARNED HAND, 8340

Judge of the District Court of
the United States, for the South-
ern District of New York, in the
Second Circuit.

Service of the within citation is hereby admit-
ted this 7th day of January, 1913.

GOULD & WILKIE,
Solicitors for Defendant-Appellee.

8341

Citation on Appeal.

BY THE HONORABLE Judges of the DISTRICT COURT
OF THE UNITED STATES, for the SOUTHERN
DISTRICT OF NEW YORK, in the SECOND CIR-
CUIT.

To The Syndicate Publishing Company, a cor-
poration, GREETING:

8342

YOU ARE HEREBY CITED and admonished to be
and appear before a UNITED STATES CIRCUIT
COURT OF APPEALS for the Second Circuit, to be
holden at the Borough of Manhattan, in the City
of New York, in the District and Circuit above
named, on the 5th day of February, 1913, pursu-
ant to an appeal filed in the Clerk's office of the
District Court of the United States for the South-
ern District of New York, wherein G. & C. Mer-
riam Company, a corporation, is complainant and
appellant, and you are defendant and appellee,
to show cause, if any there be, why the final de-
cree in said cause mentioned should not be cor-
rected and speedy justice should not be done in
that behalf.

8343

GIVEN UNDER MY HAND at the Borough of
Manhattan, in the City of New York,
in the District and Circuit above
named, this 7th day of January, in the
year of our Lord One Thousand Nine
Hundred and Thirteen, and of the In-
dependence of the United States the
One Hundred and Thirty-seventh.

8344

LEARNED HAND,

Judge of the District Court of
the United States, for the South-
ern District of New York, in the
Second Circuit.

Service of the within citation is hereby admit-
ted this 7th day of January, 1913.

STRONG & CADWALADER,
Solicitors for Defendant-Appellee.

Order as to Exhibits.

8345

**DISTRICT COURT OF THE UNITED
STATES,****SOUTHERN DISTRICT OF NEW YORK.****G. & C. MERRIAM COMPANY,
Complainant-Appellant,****VS.****CUPPLES & LEON Co.,
Defendant-Appellee.**Equity
No. 8-161.
Order.

8346

Upon all the proceedings herein, and on motion of counsel for complainant-appellant, it is

ORDERED that all original exhibits offered in evidence herein by either party be sent up to the United States Circuit Court of Appeals, for the Second Circuit, for use on the appeal herein in lieu of printed copies thereof except only the following named exhibits which have been already printed and used at the final hearing, viz: "Complainant's Exhibit, Title Pages, Cover Inscriptions, and Copyright Notices of Webster Series;" "Complainant's Exhibit, Copyright Certificates of Webster Series;" "Complainant's Exhibit, Early Contracts and Assignments;" "Complainant's Exhibit, Certified Copies of Trade-Mark Registrations;" "Complainant's Exhibit, Webster in the Courts;" "Complainant's Red Letter Exhibit, Showing Identity of Defendant's Dictionary with British Empire Dictionary."

8347

8348

Dated, January 7th, 1913.

LEARNED HAND,
U. S. District Judge.

8349

Order as to Exhibits.**DISTRICT COURT OF THE UNITED
STATES,****SOUTHERN DISTRICT OF NEW YORK.**

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

8350

vs.

THE SYNDICATE PUBLISHING COM-
PANY,
Defendant-Appellee.

Equity
No. 8-162.
Order.

Upon all the proceedings herein, and on motion of counsel for complainant-appellant, it is

8351 ORDERED that all original exhibits offered in evidence herein by either party be sent up to the United States Circuit Court of Appeals, for the Second Circuit, for use on the appeal herein in lieu of printed copies thereof except only the following named exhibits which have been already printed and used at the final hearing, viz: "Complainant's Exhibit, Title Pages, Cover Inscriptions, and Copyright Notices of Webster Series;" "Complainant's Exhibit, Copyright Certificates of Webster Series;" "Complainant's Exhibit, Early Contracts and Assignments;" 8352 "Complainant's Exhibit, Certified Copies of Trade-Mark Registrations;" "Complainant's Exhibit, Webster in the Courts;" "Complainant's Red Letter Exhibit, Showing Identity of Defendant's Dictionary with British Empire Dictionary."

Dated, January 7th, 1913.

LEARNED HAND,
U. S. District Judge.

Stipulation as to Record on Appeal.

8353

**DISTRICT COURT OF THE UNITED
STATES,****SOUTHERN DISTRICT OF NEW YORK.****G. & C. MERRIAM COMPANY,
Complainant-Appellant,****vs.****CUPPLES & LEON Co.,
Defendant-Appellee.****Equity
No. 8-161.**

8354

**G. & C. MERRIAM COMPANY,
Complainant-Appellant,****vs.****THE SYNDICATE PUBLISHING COM-
PANY,
Defendant-Appellee.****Equity
No. 8-162.**

8355

IT IS HEREBY STIPULATED that the record on appeal in the above-entitled causes shall consist of all pleadings, stipulations, depositions, exhibits, opinion of the Court at final hearing, the final decree filed in the clerk's office on January 6th, 1913, 8356 the petition for appeal, the assignment of errors, the order allowing the appeal and citation on appeal.

IT IS FURTHER STIPULATED that all the original exhibits offered in evidence by either party shall be sent up to the United States Circuit Court of Appeals for the Second Circuit, for use on the appeal herein, in lieu of printed copies thereof, except only such exhibits as have been already

8357

Stipulation to Abide Event.

printed for use at the final hearing and which appear in the printed record used upon said final hearing.

Dated, January 7th, 1913.

WILLIAM B. HALE,
Solicitor for Complainant-Appellant.

8358

GOULD & WILKIE,
Solicitors for Defendant-Appellee,
Cupples & Leon Co.

STRONG & CADWALADER,
Solicitors for Defendant-Appellee,
Syndicate Publishing Co.

Stipulation to Abide Event.

8359

DISTRICT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

C. & C. MERRIAM COMPANY,
Complainant,

vs.

CUPPLES & LEON CO.,
Defendant.

Equity No.
8-161.

8360

IT IS HEREBY STIPULATED that the pleadings in the above entitled cause be not printed in the record on appeal herein; that upon the filing of the record on appeal in the Circuit Court of Appeals for the Second Circuit, this cause shall be reserved generally, and all further proceedings

Stipulation to Abide Event.

8361

therein shall be, and hereby are, stayed, until the final determination of the suit of G. & C. Merriam Company *vs.* The Syndicate Publishing Company, begun in the District Court of the United States for the Southern District of New York (Eq. No. 8-162), now pending on appeal to said Circuit Court of Appeals for the Second Circuit; that this cause shall abide the final result of said suit against The Syndicate Publishing Company, after any and all appeals to the Circuit Court of Appeals or the Supreme Court, or other proceedings in review, which have been or may hereafter be taken by either party to said suit; that upon the entry of such final decree in said suit against the Syndicate Publishing Company, a similar decree to the same effect shall be entered in this suit, upon motion of either party, made upon three days' notice, and upon this stipulation and a certified copy of said final decree in said suit. 8362

Dated, New York, January 13, 1913.

WILLIAM B. HALE,
Solicitor for G. & C. Merriam Co.,
Complainant-Appellant.

GOULD & WILKIE,
Solicitors for Cupples & Leon Co.,
Defendant-Appellee.

8364

8365

Stipulation for Certification of Record.
DISTRICT COURT OF THE UNITED
STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

8366

vs.

CUPPLES & LEON Co.,
Defendant-Appellee.

Equity
No. 8-161.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

vs.

8367 THE SYNDICATE PUBLISHING COM-
PANY,
Defendant-Appellee.

Equity
No. 8-162.

8368 IT IS HEREBY STIPULATED that the foregoing printed transcript consisting of three volumes, paged consecutively from (1) to (2091), both inclusive, is a correct transcript of the record of the District Court in the above-entitled matters, as agreed upon, and that the same may be certified by the Clerk accordingly.

Dated, New York, January , 1913.

WILLIAM B. HALE,
Solicitor for Appellant.

GOULD & WILKIE,
Solicitors for Cupples & Leon Co.,
Appellee.

STRONG & CADWALADER,
Solicitors for Syndicate Publish-
ing Company, Appellee.

Certification of Record.

8369

UNITED STATES OF AMERICA, }
 SOUTHERN DISTRICT OF NEW YORK, } ss.:

G. & C. MERRIAM COMPANY,
 Complainant,

vs.

Eq. 8-161.

CUPPLES & LEON COMPANY,
 Defendant.

8370

G. & C. MERRIAM COMPANY,
 Complainant,

vs.

Eq. 8-162.

SYNDICATE PUBLISHING COMPANY,
 Defendant.

8371

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript in three (3) volumes, comprising pages 1 to 2093 both inclusive, of the record of the District Court in the above-entitled matters, as agreed upon.

IN TESTIMONY WHEREOF, I have caused the 8372

seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this day of January, in the year of our Lord one thousand nine hundred and thirteen and of the Independence of the said United States the one hundred and thirty-seventh.

[SEAL]

ALEXANDER GILCHRIST, JR.,
 Clerk.

United States Circuit Court of Appeals for the Second Circuit,
October Term, 1912.

No. 210.

Argued May 19, 1913; Decided June 18, 1913.

G. & C. MERRIAM COMPANY, Complainant-Appellant,
vs.

THE SYNDICATE PUBLISHING COMPANY, Defendant-Appellee.

Appeal from the District Court of the United States for the Southern
District of New York.

Before Lacombe, Ward, and Noyes, Circuit Judges.

Appeal from a final decree of the District Court, Southern District
of New York, dismissing the bill of complaint upon the merits in
a suit charging unfair competition and the infringement of trade
marks.

PER CURIAM:

Taken as a whole, we fully approve Judge Hand's opinion and
upon it affirm the decree appealed from. In so doing, however, we
must not be regarded as assenting to the proposition that the name
"Webster's Dictionary" has a technical or secondary meaning as in-
dicating a publication of the complainant. And, on the other hand,
we must not be considered as indicating an opinion that cases cannot
be presented showing unfair competition in the sale of books or as
passing upon the relief which may be granted in cases of fraud.

The decree of the District Court is affirmed with costs.

W. D. Guthrie and W. B. Hale, for the Appellant.

H. A. Bayne, for the Appellee.

At a stated term of the United States Circuit Court of Appeals in
and for the Second Circuit, held at the court rooms, in the post
office building, in the city of New York, on the 28th day of June,
one thousand nine hundred and thirteen.

Present: Hon. E. Henry Lacombe, Hon. Henry G. Ward, Hon.
Walter C. Noyes, Circuit Judges.

G. & C. MERRIAM COMPANY, Complainant-Appellant,
vs.

SYNDICATE PUBLISHING COMPANY, Defendant-Appellee.

Appeal from the District Court of the United States for the Southern
District of New York.

This cause came on to be heard on the transcript of record from
the District Court of the United States, for the Southern District of
New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

Endorsed: United States Circuit Court of Appeals, Second Circuit. Merriam Co. vs. Syndicate Pub. Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jul- 2, 1913. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

G. & C. MERRIAM COMPANY, Complainant-Appellant,

vs.

THE SYNDICATE PUBLISHING COMPANY, Defendant-Respondent.

Petition for Appeal.

The G. & C. Merriam Company, the complainant and appellant above named, feeling itself aggrieved by the order and decree heretofore made and entered by this Court in this cause on to wit the 2nd day of July, 1913, which said order and decree affirmed the decree of the District Court of the United States, for the Southern District of New York, dismissing the bill of complaint herein upon the merits with costs, hereby appeals from said order and decree of this Court to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors which is filed herewith, and it prays that its appeal may be allowed, and that a citation issue directed to the above named defendant-respondent, The Syndicate Publishing Company, commanding it to be and appear before the said Supreme Court of the United States upon the return day thereof, and that a transcript of the record, duly authenticated, may be transmitted to said Supreme Court of the United States, and also that an order be made fixing the amount of security which said complainant-appellant shall give and furnish upon said appeal, and that upon the giving of such security, all further proceedings in this Court be suspended until the determination of said appeal by said Supreme Court of the United States, to the end that said order and decree of this Court hereby appealed from may be reversed and such decree made as to said Supreme Court of the United States may seem just.

Dated, July 3rd, 1913.

WILLIAM B. HALE,
Solicitor and Counsel for Complainant-Appellant,
No. 40 Wall Street, Borough of Manhattan,
New York City.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. G. & C. Merriam Co., Complainant-App'l't, vs. The Syndicate

Publishing Co., Defendant-Resp'd't. Petition for Appeal, William B. Hale, Solicitor & Counsel for Complainant-App'l't, 40 Wall Street, New York City, Manhattan Boro. United States Circuit Court of Appeals, Second Circuit. Filed Jul- 3, 1913. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

G. & C. MERRIAM COMPANY, Complainant-Appellant,
vs.

THE SYNDICATE PUBLISHING COMPANY, Defendant-Respondent.

Order Allowing Appeal.

On reading and filing the petition for appeal of G. & C. Merriam Company, the complainant and appellant herein, and the assignment of errors made and filed by said complainant, and upon motion of William B. Hale, solicitor and counsel for said complainant-appellant, it is

Ordered that an appeal to the Supreme Court of the United States from the order and decree heretofore made and entered herein on the 2nd day of July, 1913, be, and the same hereby is allowed, and a citation is directed to issue, and that a duly authenticated transcript of the record be forthwith transmitted to said Supreme Court of the United States; and it is further

Ordered that the amount of the security on appeal to be furnished by said G. & C. Merriam Company, complainant and appellant herein, be, and the same hereby is fixed at the sum of Five hundred dollars (\$500), and that upon the making and filing with the Clerk of this Court of a good and sufficient bond in the said sum by said G. & C. Merriam Company, with good and sufficient sureties, all further proceedings in this Court be suspended and stayed until the final determination of said appeal by said Supreme Court of the United States.

Dated, July 3rd, 1913.

H. G. WARD,

U. S. Circuit Judge.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. G. & C. Merriam Co., Complainant-App'l't, vs. The Syndicate Publishing Co., Defendant-Resp'd't. Order Allowing Appeal. William B. Hale, Solicitor & Counsel for Complainant-App'l't, 40 Wall Street, New York City, Manhattan Boro. United States Circuit Court of Appeals, Second Circuit. Filed Jul- 3, 1913. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

G. & C. MERRIAM COMPANY, Complainant-Appellant,
vs.

THE SYNDICATE PUBLISHING COMPANY, Defendant-Respondent.

Assignment of Errors.

Now comes the above named G. & C. Merriam Company, the complainant and appellant herein, and says, that in the record and proceedings of said Court herein, and in the order and decree made and entered herein by said Court on the 2nd day of July, 1913, there is manifest error in this, to wit:

1. The Court erred in affirming the decree of the District Court of the United States for the Southern District of New York dismissing the bill of complaint herein.

2. The Court erred in not reversing the decree of the District Court of the United States for the Southern District of New York herein, and in not granting any relief whatever to complainant in accordance with the prayer of the bill.

3. The Court erred in failing and refusing to find that defendant had infringed all or any of complainant's registered trade-marks, and in failing and refusing to enjoin said infringement.

4. The Court erred in holding that defendant might lawfully publish and sell a copy of the English book entitled, "British Empire Dictionary" with name changed to "Webster's New Standard Dictionary" and "Webster's New Illustrated Dictionary," and in failing and refusing to enjoin defendant's use of the latter titles or any equivalent thereof.

5. The Court erred in failing and refusing to grant an injunction against defendant's use of the name "Webster" unless accompanied by a plain and unmistakable statement correctly indicating the identity of defendant's said dictionary and its origin with defendant or other person as distinguished from origin with complainant.

7. The Court erred in finding and deciding that defendant's said dictionary was based upon, abridged from, or a revision of any prior Webster's Dictionary.

8. The Court erred in failing and refusing to find and decide that the titles of defendant's dictionaries are an unlawful infringement and imitation of the prior titles of complainant's dictionaries.

9. The Court erred in failing and refusing to grant an injunction restraining defendant from passing off its said dictionaries as and for the dictionaries of complainant, and from attempting so to do.

10. The Court erred in finding and deciding that defendant's adoption and use of an alleged distinguishing statement shortly prior to the filing of the bill herein justified the denial of any injunction, defendant having denied and contested any obligation to continue using such alleged distinguishing statement, and said statement being inadequate to prevent deception of purchasers.

11. The Court erred in holding that defendant had sufficiently distinguished its books from those of complainant.

12. The Court erred in failing and refusing to enjoin defendant's fraudulent and deceptive advertisements of its said dictionaries.

13. The Court erred in failing and refusing to require defendant to account to complainant for damages and profits by reason of defendant's unlawful acts.

Wherefore complainant and appellant prays that said order and decree of said United States Circuit Court of Appeals for the Second Circuit, for the errors aforesaid, be reversed, and that a decree may be directed in favor of complainant-appellant for an injunction and an accounting in accordance with the prayer of the bill of complaint, or for such other relief as may be just.

Dated, July 3rd, 1913.

WILLIAM B. HALE,

Solicitor and Counsel for Complainant-Appellant.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. G. & C. Merriam Company, Complainant-App't, vs. The Syndicate Publishing Co., Defendant-Resp'd't. Assignment of Errors. William B. Hale, Solicitor & Counsel for Complainant-App't, 40 Wall Street, New York City, Manhattan Boro. United States Circuit Court of Appeals, Second Circuit. Filed Jul- 3, 1913. William Parkin, Clerk.

American Surety Company of New York.

Capital and Surplus over \$6,000,000.

Company's Office Building, 100 Broadway, New York.

United States Circuit Court of Appeals for the Second Judicial Circuit.

G. & C. MERRIAM COMPANY, Complainant and Appellant,
against

SYNDICATE PUBLISHING COMPANY, Defendant and Appellee.

Know all men by these presents, That we, G. & C. Merriam Company, as Principal, and American Surety Company of New York, as Surety, are held and firmly bound unto the above-named defendant, Syndicate Publishing Company, in the sum of Five Hundred Dollars (\$500.00), to be paid to the said defendant Syndicate Publishing Company, its successors or assigns; for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the Second day of July, 1913.

Whereas, the appellant in the above-entitled suit has prosecuted an appeal to the Supreme Court of the United States, to reverse the order of the Circuit Court of Appeals for the Second Judicial Dis-

trict, entered on the 2nd day of July, 1913, affirming the judgment rendered herein on the 6th day of January, 1913, by the Judge of the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, That if the said appellant shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make its plea good, then this Obligation shall be void; otherwise to remain in full force and virtue.

G. & C. MERRIAM COMPANY,
By WILLIAM B. HALE,

Its Solicitor. [SEAL.]

AMERICAN SURETY COMPANY OF
NEW YORK,

By MARSHALL S. BROWER,

Resident Vice-President.

Attest:

GEO. R. CROSBY,

Resident Assistant Secretary.

G. & C. MERRIAM COMPANY,

By WILLIAM B. HALE,

Its Solicitor.

STATE OF NEW YORK,

County of New York, ss:

On this 28th day of June, 1913, before me personally appeared Marshall L. Brower, Resident Vice President of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say: that he resides in The City of New York, N. Y.; that he is the Resident Vice President of the American Surety Company of New York, the Corporation described in and which executed the above instrument; that he knows the corporate seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation; and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said Marshall L. Brower further said that he is acquainted with George R. Crosby and knows him to be one of the Resident Assistant Secretaries of said Corporation; that the signature of said George R. Crosby subscribed to the said instrument is in the genuine handwriting of the said George R. Crosby and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him the said Marshall L. Brower, Resident Vice President.

[SEAL.]

L. A. FARRS,

Notary Public, New York County, No. 1058;

Register's Office, New York County, No. 5015.

Certificate filed in all counties.

Extract from the Record Book of the Executive Committee of the American Surety Company of New York.

"A meeting of the Executive Committee of the American Surety Company of New York was held on the 6th day of May, 1913.

* * * * *

"The following resolutions were adopted:

"Resolved, That Lester S. Moore, of New York City, N. Y., be and he is hereby constituted and appointed a Resident Vice President of this Company at the town or city aforesaid, with full power and authority to execute and deliver any and all surety bonds and undertakings, for or on behalf of this Company, in its business and in accordance with its charter; such bonds and undertakings to have in every instance, however, the seal of this Company affixed thereto, and to be attested by the signature of a Resident Assistant Secretary of this Company.

"Resolved, That E. D. Sadler and George R. Crosby, of New York City, N. Y., be and they hereby are and each of them is hereby constituted and appointed a Resident Assistant Secretary of this Company at the town or city aforesaid, with full power and authority to attest any and all surety bonds and undertakings, for or on behalf of this Company, in its business and in accordance with its charter; such bonds and undertakings to have in every instance, however, the seal of this Company affixed thereto, and to be executed on behalf of this Company by one of its Resident Vice Presidents."

STATE OF NEW YORK,

County of New York, ss:

I, W. H. Riley, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Executive Committee of the American Surety Company of New York, with the original record of said Executive Committee, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same are correct and true transcripts therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 5th day of June, 1913.

(Signed)

[L. S.]

W. H. RILEY,

Assistant Secretary.

Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was

held at the office of the Company, No. 100 Broadway, New York City, on Tuesday, January 21, 1913, at eleven o'clock a. m.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 10, 1912, for the purpose of nominating * * * officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * *

Place.	Resident Vice Presidents.	Resident Assistant Secretaries.
New York, N. Y.	Horace P. Hollister. Marshall L. Brower. A. E. Cotterell. Wm. M. Tomlins, Jr.	A. L. Adams. Marshall L. Brower. William H. Bishop. A. E. Cotterell. Charles S. Waterbury. Daniel Stewart.

* * * * *

"Whereupon, it was

"Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present, for the Members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, Officers and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

* * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * *

STATE OF NEW YORK,

County of New York, ss:

I, W. H. Riley, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth

and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 22nd day of May, 1913.

(Signed)

[L. s.]

W. H. RILEY,

Assistant Secretary.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. G. & C. Merriam Company, Complainant and Appellant, against Syndicate Publishing Company, Defendant and Appellee. Supersedeas Bond. Amount and form approved. Strong & Cadwalader, Counsel for Def't-Appellee. Approved, H. G. Ward, U. S. C. J. United States Circuit Court of Appeals, Second Circuit. Filed Jul-3, 1913. William Parkin, Clerk.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 2110 (3 vols.) inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of G. & C. Merriam Company, Complainant-Appellant, against Syndicate Publishing Company, Defendant-Appellee, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 10th day of July, in the year of our Lord One Thousand Nine Hundred and thirteen and of the Independence of the said United States the One Hundred and thirty-eighth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Syndicate Publishing Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be held in the City of Washington, District of Columbia, on the 1st day of August, 1913, next, pursuant to an appeal duly allowed by the United States Circuit Court of Appeals for the Second Circuit, and filed in the Clerk's office of said Court on the 3rd day of July, 1913, in a cause wherein G. & C. Merriam Company, a corporation, is the appellant, and you, The Syndicate Publishing Company, are the appellee, to show cause, if any there be, why the decree heretofore rendered against the said

appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 3rd day of July, Nineteen hundred and thirteen, and of the Independence of the United States the One hundred and thirty-seventh.

[Seal United States Circuit Court of Appeals, Second Circuit.]

H. G. WARD,

United States Circuit Judge in and for the Second Circuit.

Service of the above citation is hereby accepted on behalf of the said The Syndicate Publishing Company, appellee, this 3rd day of July, 1913.

STRONG & CADWALADER,

Solicitors and Counsel for Appellee.

[Endorsed:] U. S. Circuit Court of Appeals for the Second Circuit. G. & C. Merriam Company, Complainant-App'l't, vs. The Syndicate Publishing Co., Defendant-Resp'd't. Original. Citation on Appeal. William B. Hale, Solicitor & Counsel for Complainant-Appellant, 40 Wall Street, New York City, Manhattan Boro. United States Circuit Court of Appeals, Second Circuit. Filed Jul-3, 1913. William Parkin, Clerk.

Endorsed on cover: File No. 23,795. U. S. Circuit Court of Appeals, 2d Circuit. Term No. 644. G. & C. Merriam Company, appellant, vs. The Syndicate Publishing Company. Filed July 16th, 1913. File No. 23,795.

2

Office Supreme Court, U. S.

FILED

FEB 1 1915

JAMES D. MAHER

CLERK

Supreme Court of the United States.

OCTOBER TERM, 1914. No. 217.

G. & C. MERRIAM COMPANY,

Complainant-Appellant.

v.

SYNDICATE PUBLISHING COMPANY,

Defendant-Appellee.

BRIEF ON BEHALF OF COMPLAINANT-APPELLANT WITH
APPENDIX CONTAINING ABSTRACT OF TESTIMONY.

WILLIAM B. HALE,

Counsel for Complainant-Appellant.

INDEX.

I.

STATEMENT OF THE CASE.

	PAGE
Nature and object of suit.....	1-2
Grounds of federal jurisdiction.....	I
Basis for the relief sought.....	2-4
Defendant's answer.	4-5
Decision below.	5-6
State of the evidence.....	6

II.

SPECIFICATION OF ERRORS.

Summary.	7
------------------	---

III.

BRIEF OF THE ARGUMENT.

Summary of points.....	7-9
------------------------	-----

I.

Under the doctrine of unfair competition, use of a name to pass off one person's goods as and for those of another will be enjoined, even though complainant has no exclusive pro- prietary right in the name.....	9-13
--	------

II.

The name "Webster's Dictionary" has acquired a secondary meaning and a trade signifi- cance, identifying and indicating complain- ant's books, and defendant's use of that same name as the title of its dictionary is deceptive and should be enjoined.....	13-64
---	-------

II

	PAGE
Primary and secondary meaning of term.....	13-14
Question not decided below.....	14
Evidence of secondary meaning.....	14
(A) Prior adjudications.....	15-17
(B) Long, prior, extensive, and exclusive use.....	17-26
(C) Authority, reputation, and character of respective books as a means of deception.....	26-35
(D) Actual deception of purchasers and others.....	35-39
(E) Educators, scholars, literary men, publishers, proof-readers, and book-sellers.....	39-41
Defendant's opposing evidence and arguments on question of secondary meaning.....	42-64
(1) Knowledge of name of publisher..	43-53
(2) Specious denial of original and exclusive use.....	53-61
(3) Existence of other infringements..	61-64

III.

Defendant's book is a reprint of the British Empire Dictionary, an English work not even "based" on any edition of Webster's Dictionary; it is not a genuine Webster's Dictionary in any sense of the term.....	64-89
Burden of proof is on defendant to justify.....	65-66
Decision below, and comments thereon.....	66-70
Evidence of literary origin of defendant's book..	71-84
What is a "genuine Webster's Dictionary"....	84-89
Ordinary literary works distinguished from growing reference works.....	86-87

IV.

Defendant has fraudulently misused the name "Webster's" on its books and in its advertisements. An injunction should have been granted.	89-111
Facts showing actual and intended fraud.	89-101
No cessation of fraud before or after suit.	101
Decision below and comments thereon.	102-111

V.

Defendant cannot justify its use of the name "Webster's" by asserting the expiration of copyright upon the 1847 edition, because: (1) defendant does not publish the expired edition, or even a revision of it; and (2) the title and generic name of the expired book is "An American Dictionary," not "Webster's Dictionary".	112-124
(1) Expiration of early copyrights no defense.	112-114
Doctrine of "Singer" cases.	114-120
(2) "Webster's Dictionary" not the title of book with expired copyright.	120-124

VI.

Secondary meaning names are protected by an absolute form of injunction against a false or unnecessary manner of use, and in other cases, by a qualified injunction requiring an adequate explanation to accompany the name.	124-137
(a) Absolute injunction against false and deceptive use of name.	125-131

IV

	PAGE
Personal names.....	125-126
Geographical or place names.....	126-129
Generic names.....	129-130
Book titles.....	130
Reasons for rule.....	130-131
(b) Use as short title or market name prohibited	131-135
(c) Affirmative distinguishing features required	135-137

VII.

Defendant has infringed complainant's registered trade-marks, of which the name "Webster's" is the distinctive feature.....	137-142
---	---------

VIII.

Complainant has been guilty of no laches, but on the contrary has been litigating vigorously its rights in the name "Webster's" since prior to defendant's infringement, of which defendant had actual notice before beginning its infringement.....	142-147
--	---------

IX.

Complainant has been guilty of no inequitable conduct; its hands are clean.....	147-160
(A) Circumstances under which this suit was brought	147-149
(B) Webster's New International Dictionary.....	149-155
(C) Webster's Condensed Dictionary.....	155-160

X.

The usual accounting should be directed.....	160-162
--	---------

XI.

CONCLUSION.

Form of decree proposed.....	162-163
------------------------------	---------

APPENDIX.

I.

History and Chronological Statement of the Publication of Webster Dictionaries from 1806 to the Present Date.....	1-40
---	------

II.

Evidence Showing Trade Significance and Sec- ondary Meaning of Name "Webster's Dictionary," and Deception of Purchasers by Defendant.....	40-62
<i>a</i> Purchasers Actually Deceived.....	40-53
<i>b</i> Publishers, Booksellers and Literary Men.....	53-62

III.

Evidence as to Literary Origin of Defendant's Dictionary.....	62-73
--	-------

TABLE OF CASES CITED.

	PAGE
<i>Actiengesellschaft, etc., v. Amberg</i> (C. C. A.), 109 Fed. 151.....	64
<i>Adam v. Folger</i> , 120 Fed. 260.....	117
<i>Ainsworth v. Walmsley</i> , L. R. 1 Eq. 518, 35 L. J. Ch. 352.....	138, 150
<i>Allegretti, etc., Co. v. Keller</i> , 85 Fed. 643.....	124, 136
<i>American Bell Tel. Co. v. Southern Tel Co.</i> , 34 Fed. 795.....	146
<i>American Graphophone Co. v. National Gramo- phone Co.</i> , 90 Fed. 824.....	146
<i>American Tobacco Co. v. Polacsek</i> , 170 Fed. 117, 121.....	11
<i>American Washboard Co. v. Saginaw Mfg. Co.</i> , (C. C. A., 6th Cir.) 103 Fed. 281.....	111, 127
<i>Am. Watch Co. v. U. S. Watch Co.</i> , 173 Mass. 85, 53 N. E. 141, 43 L. R. A. 826, 73 Am. St. Rep. 263.....	119
" <i>Anatolia</i> " liquorice case (13 Wall. loc. cit. 326).	128
<i>Atlas Mfg. Co. v. Street</i> (C. C. A.), 204 Fed. 398.....	117, 118
<i>Baglin v. Cusenier</i> , 221 U. S. 580.....	116, 129
<i>Baker & Co. v. Baker</i> , 87 Fed. 209.....	133
<i>Baker & Co. v. Sanders</i> (C. C. A., 2nd Cir.), 80 Fed. 889.....	124, 133, 136
<i>Baker & Co. v. Slack</i> , 130 Fed. 514.....	133
<i>Baldwin v. Van Dusen</i> , 37 N. Y. 487.....	84
<i>Batcheller v. Thompson</i> (C. C. A.), 93 Fed. 660.	122
<i>Bates Mfg. Co. v. Bates Numbering Machine Co.</i> , 172 Fed. 892.....	10, 11, 43, 45

VII

	PAGE
<i>Birmingham Vinegar Brewery Co. v. Powell</i> , [1896] 2 Ch. 54, 68; 14 R. P. C. 720, [1897] A. C. 710, 713, 716.....	43, 44
<i>Bissell Plow Case</i> , 121 Fed. 357, 366.....	132, 133
<i>Black v. Ehrlic</i> , 44 Fed. 793.....	118
<i>Braham v. Beachim</i> , L. R. 7 Ch. Div. 848.....	127
<i>Brown Chemical Co. v. Meyer</i> , 139 U. S. 540.....	125, 138, 150
<i>Callaghan v. Myers</i> , 128 U. S. 617.....	74
<i>Canal Co. v. Clark</i> , 13 Wall. (U. S.) 311.....	128
<i>Cellular Co. v. Maxton</i> (1899), App. Cas. 344..	42
<i>Centaur Co. v. Heinsfurter</i> (C. C. A.), 84 Fed. 955.....	115, 117, 129
<i>Centaur Co. v. Killenberger</i> , 87 Fed. 725.....	115
<i>Centaur Co. v. Neathery</i> (C. C. A.), 91 Fed. 891, 900.....	115, 122, 129
<i>Chadwick v. Covell</i> , 151 Mass. 190.....	150
" <i>Chatterbox Cases</i> ", 21 Fed. 189; 27 Fed. 22, 23; 29 Fed. 91; 31 Fed. 154.....	119, 130
<i>Chickering v. Chickering</i> (C. C. A. 7th Cir.), 215 Fed. 490.....	111, 134
<i>C. F. Simmons M. Co. v. Mansfield Drug Co.</i> , 93 Tenn. 84.....	159
<i>Clark Thread Co. v. Armitage</i> , 67 Fed. 896, 900.	10
<i>Clark Thread Co. v. Armitage</i> (C. C. A., 2nd Cir.), 74 Fed. 936; affirming 67 Fed. 896..	133
<i>Clark Thread Co. v. Wm. Clark Co.</i> , 55 N. J. Eq. 658.....	107
<i>Cocks v. Chandlers</i> , L. R. 11 Eq. 446, 450.....	64
<i>Collingsplatt v. Finlayson</i> , 88 Fed. 693.....	127
<i>Corbett v. Purdy</i> , 80 Fed. 901.....	117

	PAGE
<i>Dicks v. Yates</i> , 50 L. J. Ch. N. S. 809, 815.....	120, 130
<i>Doan v. American Book Co.</i> (C. C. A.), 105 Fed. 772.	25
<i>Donnell v. Herring-Hall-Marvin Safe Co.</i> , 208 U. S. 267.	126
<i>Dr. A. Reed Cushion Shoe Co. v. Frew</i> (C. C. A., 2nd Cir.), 162 Fed. 887.....	133, 136
<i>Dr. S. A. Richmond Nervine Co. v. Richmond</i> , 159 U. S. 293.....	150
<i>Dwinnell-Wright v. Co-Operative Supply Co.</i> , 148 Fed. 242.....	107
<i>Edison Co. v. Mt. Morris Light Co.</i> , 57 Fed. 642, 58 Fed. 572.....	146
<i>Elgin Watch Co. v. Illinois Watch Co.</i> , 179 U. S. 665 ("Elgin Watches").....	11, 119, 127, 128, 136
<i>Enterprise v. Landers</i> , 124 Fed. 923-927.....	39
<i>Faulder v. O. & G. Rushton Co.</i> , 20 Rep. Pat. Cas. 477, 485.	43, 46
<i>Florence Mfg. Co. v. Dowd</i> , 189 Fed. 44.....	161
<i>Ford v. Foster</i> , L. R. 7 Ch. 611.....	63
<i>French Republic v. Saratoga Vichy Springs Co.</i> , 191 U. S. 427, 439.....	11, 136, 147
<i>Gage-Downs Co. v. Featherbone Corset Co.</i> (C. C.), 83 Fed. 213.....	127
<i>Gannert v. Ruppert</i> (C. C. A., 2nd Cir.), 127 Fed. 962.	139
<i>Hall v. Barrows</i> , 4 De G. J. & S. 150, 33 L. J. Ch. 204.....	139, 150
<i>Hall's Safe case</i> , 208 U. S. 554.....	101
<i>Hanover Star Milling Co. v. Allen</i> (C. C. A., 7th Cir.), 208 Fed. 513.....	111, 118

	PAGE
<i>Hansen v. Siegel Cooper Co.</i> , 106 Fed. 691 ("Junket Tablets").....	133
<i>Harper v. Ranous</i> , 67 Fed. 904 (per Lacombe, J.).....	117
<i>Harper v. Holman</i> , 84 Fed. 224.....	130
<i>Harper v. Lare</i> , 103 Fed. 203.....	130
<i>Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.</i> , 208 U. S. 554, 560... 12, 107, 119, 126, 136, 150	
<i>Hiram Holt Co. v. Wadsworth</i> , 41 Fed. 34.....	122
<i>Hoffman v. B. Kuppenheimer</i> , 183 Fed. 597.....	117
<i>Holeproof Hosiery Co. v. Wallach Bros. (C. C. A., 2nd Cir.)</i> , 172 Fed. 859.....	158
<i>Holzapfels Compositions Co. v. Rahtjen's Amer- ican Compositions Co.</i> , 183 U. S. 12... 115, 117, 129	
<i>Howe Scale Co. v. Wyckoff, Seaman & Benedict</i> , 198 U. S. 118..... 42, 85, 125, 138	
<i>In re Palmer's Trade-Mark</i> , L. R. 24 Ch. Div. 504.....	117
<i>Insurance Co. v. Eldredge</i> , 102 U. S. 545.....	146
<i>International Silver Co. v. Rogers Corp.</i> , 67 N. J. Eq. 646, 72 N. J. Eq. 933, 110 Fed. 958..... 12, 125, 133, 137	
<i>Jacobs v. Beecham</i> , 221 U. S. 263..... 12, 116, 129	
<i>Jaffe v. Evans</i> , 70 App. Div. (N. Y.) 190..... 115, 129	
<i>Janney v. Pancoast Ventilator Mfg. Co.</i> , 128 Fed. 121.....	117
<i>Johnson v. Seabury</i> , 71 N. J. Eq. 36.....	159
<i>Johnson v. Seaman (C. C. A.)</i> , 108 Fed. 951...	116
<i>Kalem Co. v. Harper Bros.</i> , 222 U. S. 55.....	10
<i>Keasby v. Brooklyn Chemical Works</i> , 142 N. Y. 467.....	130
<i>Kidd v. Johnson</i> , 100 U. S. 617.....	150

	PAGE
<i>La Republique Francais v. Saratoga Vichy Spring Co.</i> , 191 U. S. 427.....	126
<i>Lee v. Haley</i> , L. R. 5 Ch. App. 155.....	127
<i>Liebig's Extract of Meat Co. v. Liebig's Extract Co.</i> (C. C. A.), 180 Fed. 688.....	65
<i>Liebig Extract of Meat Co. v. The Chemists Co-operative Socy.</i> , 13 Rep. Pat. Cas. 635, affirmed on appeal, 13 Rep. Pat. Cas. 736. .	35, 100
<i>Levy v. Walker</i> , L. R. 10 Ch. D. 436.....	152
<i>List Pub. Co. v. Keller</i> , 30 Fed. 772.....	74
<i>Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co.</i> (C. C. A.), 166 Fed. 26.....	117, 136
<i>Mark Twain Case</i> , 14 Fed. 728.....	137
<i>Massam v. Thurley Co.</i> , 14 Ch. D. 748.....	152
<i>McLean v. Fleming</i> , 96 U. S. 245.....	10, 11, 138, 147
<i>Merriam v. Adams</i> (S. D. of N. Y., Dec. 2, 1892, unreported).	110
<i>Merriam v. Famous, etc., Co.</i> , 47 Fed. 411.....	110, 112, 117, 124, 137, 147
<i>Merriam v. Holloway Pub. Co.</i> , 43 Fed. 450... ..	112, 117, 137, 147
<i>Merriam v. Ogilvie</i> , 149 Fed. 858; 159 Fed. 638; 170 Fed. 167.....	16, 63, 84, 113, 119, 123, 130, 143, 147, 154
<i>Merriam v. Saalfeld</i> (C. C. A.), 190 Fed. 927, 931, 198 Fed. 369, 374, 375.....	64, 65, 84, 109, 111, 113, 118, 123, 130, 136, 147, 148, 161
<i>Merriam v. Straus</i> , 136 Fed. 477.....	113, 147
<i>Merriam v. T. H. Robinson Stationery Co.</i> (Northern District of Texas, Feb. 24, 1891, unreported).	110
<i>Merriam v. Texas Siftings Pub. Co.</i> , 49 Fed. 944.....	16, 98, 110, 112, 117, 137, 147

	PAGE
<i>Menendez v. Holt</i> , 128 U. S. 514.....	137, 147
<i>Metzler v. Wood</i> , 8 Ch. Div. 606, 47 L. J. Ch. 625.....	119, 130
<i>Meyer v. Bull</i> (C. C. A.), 58 Fed. 884, 886....	133, 134
<i>Montgomery v. Thompson</i> (1891), App. Cas. 217, 64 L. T. N. S. 749 ("Stone Ale")....	133
<i>Moxie v. Daoust Co.</i> (C. C. A., 1st Cir.), 206 Fed. 434.....	131
<i>National Distilling Co. v. Century Liquor & Cigar Co.</i> (C. C. A., 6th Cir.), 183 Fed. 206, 208.....	126, 152
<i>N. K. Fairbank Co. v. R. W. Bell Mfg. Co.</i> , 77 Fed. 869.....	132
<i>N. Y. Herald v. Star Co.</i> , 146 Fed. 204; aff'd 146 Fed. 1023.....	58
<i>Newman v. Alvord</i> , 51 N. Y. 189.....	127, 128
<i>Ogilvie v. Merriam</i> , 149 Fed. 858, 860, modified 159 Fed. 638.....	16, 63, 84, 113; 119, 123, 130, 143, 147, 154
<i>Oxford University v. Wilmore-Andrews Pub. Co.</i> , 101 Fed. 443.....	130, 133
<i>Paris Medicine Co. v. Hill</i> , 102 Fed. 148, 150....	100
<i>Pence v. Langdon</i> , 99 U. S. 578, 581.....	145
<i>Pillsbury-Washburn Flour Mills Co. v. Eagle</i> , 30 C. C. A. 386, 86 Fed. 608.....	12, 127
<i>Pinet v. Maison Pinet</i> , 14 Rep. Pat. Cas. 933, 15 Rep. Pat. Cas. 65.....	125
<i>Powell v. Birmingham Vinegar Brewery</i> , [1896] 2 Ch. 54, 68, on appeal [1897] App. Cas. 710, 716.....	43

	PAGE
<i>Rathjen's Am. Comp. Co. v. Hotzappel Comp. Co.</i> (C. C. A.), 101 Fed. 257, 263.....	63
<i>Reddaway v. Banham</i> (1896), App. Cas. 199... 10, 12, 91, 119, 133	
<i>Ricker v. Leigh</i> , 74 App. Div. (N. Y.) 138....	107
<i>Robertson v. Berry</i> , 50 Md. 591, 33 Am. R. 328..	139
<i>Rowley v. J. F. Rowley Co.</i> (C. C. A.), 161 Fed. 94... ..	124
<i>Royal Baking Powder Co. v. Royal</i> (C. C. A.), 122 Fed. 337, 343, 345.....	125, 156
<i>Saxlehner v. Eisner</i> , 88 Fed. 61, 147 Fed. 189, 191, 179 U. S. 19.....	107, 147
<i>Scheuer v. Muller</i> (C. C. A.), 74 Fed. 225, 228..	100
<i>Seixo v. Provezende</i> , L. R. 1 Ch. App. 192.....	127
<i>Shaver v. Heller</i> (C. C. A.), 108 Fed. 821, 824, 832... ..	12, 43, 46, 58, 133, 135
<i>Shook v. Wood</i> , 10 Phil. (Pa.) 373.....	117
<i>Singer Mfg. Co. v. June Mfg. Co.</i> , 163 U. S. 169.....	12, 13, 101, 114, 116, 117, 124, 129, 136, 141, 142, 161
<i>Singer Mfg. Co. v. Bent</i> , 163 U. S. 205.....	114, 122
<i>Singer Mfg. Co. v. Hipple</i> , 109 Fed. 152.....	115, 129
<i>Social Register Assn. v. Howard</i> , 60 Fed. 270..	130, 139
<i>Social Register Assn. v. Murphy</i> , 128 Fed. 116..	139
<i>Standard Sanitary Mfg. Co. v. Standard Ideal Co.</i> , 37 Quebec Super. Ct. 33.....	47
<i>Tetlow v. Tappan</i> , 85 Fed. 774, 775.....	63
<i>Texas Siftings Case</i> , 49 Fed. 944, 946.....	158
<i>Thaddens Davids Co. v. Davids</i> , 233 U. S. 461..	12,
	140, 141

XIII

	PAGE
<i>Thomas G. Plant Co. v. May Mercantile Co.</i> , 153 Fed. 229, 231.....	107
<i>Thomas v. Lennon</i> , 14 Fed. 849.....	119
<i>Thompson v. Montgomery</i> , L. R. 41 Ch. Div. 35.	127
<i>Timolat v. Franklin Boiler Works</i> (C. C. A., 2nd Cir.), 122 Fed. 69.....	146
<i>Van Den Berg case</i> , 226 U. S. 452.....	111
<i>Vitascope v. U. S. Phonograph Co.</i> , 83 Fed. 30..	116
<i>Warden v. California Fig Syrup Co.</i> , 187 U. S. 516.....	149
<i>Waterman Co., L. E. v. Modern Pen Co.</i> , 35 Sup. Ct. Rep. 91.....	12, 125, 126, 150
<i>West Pub. Co. v. Lawyers' Co-Op. Co.</i> (C. C. A.), 79 Fed. 756.....	74
<i>Westinghouse Co. v. Wagner Elec. Co.</i> , 225 U. S. 604.....	161
<i>Williams v. Mitchell</i> , 106 Fed. 168, 171.....	133, 134
<i>William Rogers Mfg. Co. v. Rogers & Spurr Mfg. Co.</i> (C. C.), 11 Fed. 495, 498.....	152
<i>Wotherspoon v. Currie</i> , L. R. 5 H. L. 508, 27 L. T. N. S. 393.....	12, 43, 45, 119, 127, 133
<i>Yorkshire Relish Case</i> , 14 R. P. C. 720, 727....	132



Supreme Court of the United States.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

vs.

SYNDICATE PUBLISHING COMPANY,
Defendant-Appellee.

OCTOBER TERM,
1914.
No. .

BRIEF AND ARGUMENT FOR APPELLANT.

I.

STATEMENT:

This is an appeal from the affirmance, by the Circuit Court of Appeals for the Second Circuit, of a final decree of the District Court for the Southern District of New York dismissing the bill of complaint upon the merits with costs.

The bill charges unfair competition and infringement of registered trade-marks, by means of which defendant is passing off a British dictionary as and for the well-known "Webster" dictionaries of the complainant. In sustaining exceptions to the answer, Judge Hough concisely stated the object of the suit as follows:—"In my opinion the bill alleges that by reason of a long continued and lawful course of business and by the registration of certain trade-marks, it [complainant] has acquired such rights in the word 'Webster' as applied to dictionaries that it is entitled to complain of certain specific acts of defendant, viz.: Obtaining the plates of a book called the 'Crown Dictionary' and printing therefrom a book re-entitled

'Webster's New Standard Dictionary,' the only new thing about it being the title." (Opinion filed January 23rd, 1912.)

Jurisdiction is rested not alone upon diverse citizenship (though the necessary diversity exists, and is alleged), but also upon federal questions as to the validity and infringement of trade-marks registered respectively under the Trade-mark acts of 1881 and 1905.

The name "Webster" in the title of dictionaries has for many years been identified with complainant's publications, and as such has acquired a secondary meaning indicating the dictionaries compiled and published by complainant, the Merriam Company. The wrong alleged is (1) the use by defendant of that name in the title of its dictionary and (2) the publication of misleading and deceptive advertisements. The bill prays an injunction against these acts and an accounting. Judge Coxe, in granting a preliminary injunction, at which time it was not known that defendant's book was substantially a mere reprint of a British dictionary, and defendant's affidavits that it was revised from Webster were uncontradicted, required the defendant to accompany its use of the name Webster with a warning statement intended to distinguish its books from the books of complainant, and enjoined any form of deceptive advertising. The dismissal of the bill upon the merits, however, has terminated even this limited protection, although the proofs at final hearing entitled complainant to a much broader injunction.

The basis for the relief sought.

The bill alleges in substance and the evidence establishes that complainant's predecessors, Messrs G. & C.

Merriam, acquired in or about the year 1847 the then existing series of "Webster" dictionaries from the estate of Noah Webster; that this series has been continued to the present time by complainant and its predecessors, who have compiled, published and sold numerous revised dictionaries, each of which has been designated and known by the name of "Webster's Dictionary"; that by reason of this long, lawful and exclusive use, the name "Webster" or Webster's", as applied to dictionaries, has acquired a trade significance and a secondary meaning, and indicates to the public that all dictionaries bearing that name are the dictionaries of the complainant; that in 1908, the defendant purchased the plates of an older dictionary then entitled and known as the "Crown Dictionary" and changed its name to that of "Webster's New Standard Dictionary", and, after eliminating all distinguishing marks, largely sold it under the latter name (also as "Webster's New Illustrated Dictionary"), and that such use of the name "Webster's Dictionary" as the substituted title of defendant's "Crown Dictionary" is fraudulent and deceptive and has deceived many persons into buying defendant's dictionary as and for a dictionary of complainant. It is further alleged and the evidence establishes that the complainant is the proprietor of ten registered trade-marks consisting of the word "Webster" in combination with other words or features, and that defendant's use of that name upon its dictionaries is an infringement of these registered trade-marks. Two of these trade-marks were registered in 1890, one consisting of a monogram "N W" together with the word "Webster's"; the other consisting of the same monogram together with the words "Webster's Inter-

national." The remaining eight trade-marks were registered in 1907 under the "ten year clause" of the Act of 1905, and consist respectively of the words, "Webster's Academic", "Webster's Common School", "Webster's Primary", "Webster's High School", "Webster's Condensed", "Webster's Practical", "Webster's National Pictorial", and "Webster's Counting-house and Family." It is also alleged and was proved that defendant had issued fraudulent and deceptive advertisements of its dictionary.¹

No infringement of complainant's copyrights is charged in this suit, and no protection to literary property as such is sought. The text of defendant's book does not infringe the text of complainant's books. It is wholly different. *It is the fraudulent title only of which complaint is made.* The case is solely and simply one for an injunction against unfair competition and infringement of trade-marks whereby defendant is trespassing upon the good will and reputation of complainant's dictionaries, and is deceiving the public into purchasing defendant's copy of a British dictionary under belief that it is one of the well-known "Webster's" dictionaries of the complainant, which enjoy an established authority and reputation, and for which there is a steady call in the market created by complainant's labor, skill and expenditures.

The defendant's answer.

The answer (1) denies that the name Webster has acquired any secondary meaning in connection with dictionaries, or that it indicates the dictionaries of the complainant, (2) contends that the expiration of the

¹*Bill of Complaint, Rec. vol. I, pp. 1-78.*

copyright upon the early dictionaries in the Webster series has rendered the name Webster as applied to dictionaries wholly *publici juris*, and authorizes its use as the title of any dictionary that contains any part of the literary contents of the dictionaries of which Noah Webster was the author or proprietor, and (3) asserts that defendant's dictionary was revised from the 1847 edition of "Webster's Unabridged Dictionary," and is, therefore entitled to be called, *simpliciter*, "Webster's Dictionary." Fraudulent intent is denied, although the acts charged are admitted.¹

The decision below.

The court below found that defendant's book was copied from the British Empire Dictionary (*alias* "Crown Dictionary") with which it was substantially identical; that the British Empire Dictionary was in turn "based" upon still another British dictionary entitled "Ogilvies Imperial Dictionary" of 1883; that this last named book was a revision of an earlier edition of the same name issued in 1850, and that this early edition was based upon some early Webster's Dictionary, not specifically identified. The court assumed, for the purposes of this case, that the name "Webster" had acquired a secondary meaning, and had come to indicate *prima facie* the dictionaries of complainant. The Court then found that "the defendants had the qualified right to call their books 'Webster's', provided they properly distinguished so as to cut out the secondary meaning." But instead of giving effect even to this limited finding, the Court dismissed the bill, thereby absolving defendant from any

¹See *Answer, Rec. vol. II*, pp. 952, 957.

duty to distinguish, and thus adjudging for all time that defendant has an unqualified right to sell this British dictionary as the modern well known Webster's Dictionary of complainant, and also the right to continue the fraudulent advertising which Judge Coxe had enjoined on the preliminary motion. The Court below took the extraordinary position that bringing this suit to judicially determine the right of this British book to bear the name "Webster's" was illegal; that complainant should be penalized for not accepting, in advance of judicial determination, defendant's offer to use a certain form of alleged distinguishing notice, as the limit of complainant's rights, and for insisting that this particular book had no right to be called "Webster's"; that because complainant did not acquiesce in defendant's construction of complainant's rights, the Court would "not inquire whether it gives the fullest protection to which the complainant is entitled." (*Rec. vol. III, p. 2068.*) The bill was thereupon dismissed, although concededly defendant had been violating complainant's rights even as defined by the court below, and although defendant by its answer claimed a right to continue such wrongful conduct.

State of the evidence.

There is substantially no conflict in the testimony, though the parties differ widely as to what the uncontradicted testimony and exhibits actually show. The facts are summarized and discussed in the following points. For convenience of reference, an abstract of the testimony upon the controverted points is given in an appendix.

II.

SPECIFICATION OF ERRORS.

The specific errors assigned in the record and now relied on (*vol. III*, pp. 2097, 2098) may be summarized as follows:

FIRST: That the complainant was entitled to a decree, (1) enjoining the defendant from using the name "Webster" as part of the title or common short name of the British Empire Dictionary, sometimes called "Crown Dictionary", (2) requiring the defendant to use an adequate distinguishing statement in connection with any use of the word "Webster" as descriptive of its dictionary in order to prevent deception, (3) restraining deceptive and fraudulent advertising and unfair methods of competition, and (4) enjoining the infringement of complainant's registered trade-marks.

SECOND: That complainant was entitled to an accounting of damages and profits resulting from the unfair and wrongful acts of defendant.

III.

BRIEF OF THE ARGUMENT.

I.

Under the doctrine of unfair competition use of a name to pass off one person's goods as and for those of another will be enjoined, even though complainant has no exclusive proprietary right in the name (*Point I, post*, p. 9 *et seq.*).

II.

The name "Webster's Dictionary" has acquired a secondary meaning, and now identifies and indicates

the books of complainant's series; defendant's use of the same name as the title of its dictionary is deceptive and should be enjoined (Point II, *post*, p. 13 *et seq.*).

III.

Defendant's book is a reprint of the "British Empire Dictionary," an English work, not even "based" on any edition of Webster's Dictionary; it is not a genuine Webster's Dictionary in any sense of the term (Point III, *post*, p. 64 *et seq.*).

IV.

Defendant has fraudulently misused the name "Webster's" on its books and in its advertisements; an injunction should have been granted. (Point IV, *post*, p. 89 *et seq.*).

V.

Defendant cannot justify its use of the name "Webster's" by asserting the expiration of copyright upon the 1847 edition, because: (1) defendant does not publish the expired edition, or even a revision of it, and (2) the title and generic name of the expired book is "An American Dictionary,"—not "Webster's Dictionary" (Point V, *post*, p. 112 *et seq.*).

VI.

Secondary meaning names are protected by an absolute form of injunction against a false or unnecessary manner of use, and in other cases by a qualified injunction requiring an adequate explanation to accompany the name (Point VI, *post*, p. 124 *et seq.*).

VII.

Defendant has infringed complainant's registered trade-marks, of which the name "Webster's" is the distinctive feature (Point VII, *post*, p. 137 *et seq.*).

VIII.

Complainant has been guilty of no laches, but on the contrary has been vigorously litigating its rights in the name "Webster's" since prior to defendant's infringement, of which defendant had actual notice before it began its infringement (Point VIII, *post*, p. 142 *et seq.*).

IX.

Complainant has been guilty of no inequitable conduct; its hands are clean (Point IX, *post*, p. 147 *et seq.*).

X.

The usual accounting should be directed (Point X, *post*, p. 160 *et seq.*).

POINTS.

I.

THE DOCTRINE OF UNFAIR COMPETITION.

The law of unfair competition, which is the basis of the law of technical trade-marks, rests upon the principle of business morality that one person will not be permitted to pass off his goods as those of another who has succeeded in establishing a reputation for

the quality of his goods. The reason for the rule is that the reputation and good-will which a particular proprietor succeeds in establishing for his own goods and methods of dealing are his property,¹ and are entitled to protection as any other property.² *McLean v. Fleming*, 96 U. S., 245. The means by which one man's goods are passed off as those of another are wholly immaterial, because it is unlawful to produce that result by any means.³ "The most innocent objects," as this court has said, "may be used for unlawful purposes." *Kalem Co. v. Harper Bros.*, 222 U. S., 55. "Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol. It may arise from the use of words, etc., which everybody may use. The question is whether what is done in a special case tends to pass

¹Coxe, J., said in *Clark Thread Co. v. Armitage*, 67 Fed. 896, 900: "The demand is for the complainant's thread, and, though other thread is used to a limited extent, it is not too much to say that in certain localities the market belongs to the complainant. It has taken capital, industry and years of arduous endeavor to produce this result. If the complainant had not dealt honestly with the public it would not be in this position today. Its success is due to the fact that for a generation it has furnished an article in which the people had faith. This good will is the complainant's inheritance and its property. It is as much a part of its assets as its mill or its counting house. No one has a right to destroy it except by fair and honest competition. No other manufacturer has a right to take away the complainant's customers by inducing them to believe that they are purchasing the complainant's goods."

²*Reddaway v. Banham*, [1896] App. Cas. 199.

³"Equity does not concern itself as to what the means, how, or with what intent they are used, if the result is fraud, and, if the public are induced thereby to purchase the goods of one under the belief that they are those of another, such means will be enjoined." *Bates Mfg. Co. v. Bates Numbering Machine Co.*, 172 Fed. 892, 895.

off the goods of one for those of another, or tends to deprive such other of his rights."¹ *McLean v. Fleming*, 96 U. S., 245.

The exclusiveness or non-exclusiveness of a complainant's right in a trade name used as the instrument of harm merely affects the form of the relief which will be granted. If the right be exclusive, as in the case of technical trade-marks, an absolute unqualified injunction will be granted and infringement in any form will be enjoined. If the right be not exclusive, as in the case of generic, geographical, or personal names, the injunction will merely regulate the defendant's manner of using the trade name so as to prevent deception. The court will then prohibit any untrue, unnecessary, or inappropriate manner of use which unduly injures the complainant, and will require the defendant to adopt reasonable precautions to prevent confusion, and consequent damage, from any reasonably necessary or proper use, but will leave him at liberty to use the word in any manner which is honest and fair and not calculated to deceive the public. In short, use will be permitted; abuse will be enjoined. These rules are well established and have been often applied.

Thus, although no one can acquire an exclusive right in a geographical name, such a name may acquire a trade significance, termed "a secondary meaning", which will be protected by injunction against any misleading manner of use by a rival trader. *French Republic v. Saratoga Vichy Springs Co.*, 191 U. S. 427 ("Vichy"); *Elgin Watch Co. v. Illinois Watch*

¹*Bates Mfg. Co. v. Bates Numbering Machine Co.*, 172 Fed. 892, 895. See also *American Tobacco Co. v. Polacsek*, 170 Fed. 117, 121.

Co., 179 U. S. 665 ("Elgin Watches"); *Shaver v. Heller*, (C. C. A.) 108 Fed. 821, 832, ("American Ball Blue"); *Pillsbury Washburn Flour Mills Co. v. Eagle*, (C. C. A.) 86 Fed. 608, ("Minneapolis Flour"); *Wotherspoon v. Currie*, L. R. 5, H. L. 508, ("Glenfield Starch").

The same rule applies to the use of personal names. No one has an exclusive right to the use of his own name as against another person of the same name. But the right to use one's own name is not superior to the obligation of using it honestly, and so as not unduly to injure another, and injunctions are, therefore, often granted regulating a man's use of his own name, and prohibiting its use in such a manner as to confuse his goods with those of another in the public mind. *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S. 554, ("Hall's Safes"); *L. E. Waterman Pen Co. v. Modern Pen Co.*, 35 Sup. Ct. Rep. 91 (not yet officially reported); *Jacobs v. Beecham*, 221 U. S. 263; *Thaddens Davids Co. v. Davids*, 233 U. S. 461; *International Silver Co. v. Rogers Corp.*, 67 N. J. Eq. 646. In fact, even generic descriptive words, such as "Camel's Hair Belting", will be protected by injunction where they have acquired a trade significance, and defendant's manner of using them is deceptive, unfair, or dishonest. *Reddaway v. Banham*, (1896) App. Cas. 199, which has been repeatedly cited with approval in many American cases. "Singer Sewing Machines" is a notable instance. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169.

If, therefore, the name "Webster" has acquired a secondary meaning and come to be the designation of complainant's dictionaries, as the court below assumed to be the fact, then complainant is entitled to

some form of relief against defendant's deceptive misuse of that name.

II.

THE NAME "WEBSTER'S DICTIONARY" HAS ACQUIRED A SECONDARY MEANING AND A TRADE SIGNIFICANCE, IDENTIFYING AND INDICATING COMPLAINANT'S BOOKS, AND DEFENDANT'S USE OF THAT SAME NAME AS THE TITLE OF ITS DICTIONARY IS DECEPTIVE AND SHOULD BE ENJOINED.

This case is unique in the fact that defendant's use of the term "Webster's Dictionary" is false and deceptive in *both* its primary and secondary sense. Usually the right to relief is based wholly upon a secondary meaning.

In both a primary and a secondary sense the name "Webster's Dictionary" now indicates to the public the complainant's dictionaries. All of complainant's current books are published and copyrighted under the name or title of Webster's Dictionary, some additional descriptive word like "Condensed", "Academic", "High School", etc., being usually added to indicate the particular variety or size.¹ Complainant's publications under the name of "Webster's Dictionary" have been long on the market and are well known and universally called for by that name. The primary

¹In the *Singer* case (163 U. S. 169, 179), the Supreme Court in holding that the name "Singer" was the generic name of all varieties of complainant's machines said: "This conclusion is not shaken by the contention that, as many different machines were made by the Singer Manufacturing Company, therefore it was impossible for the name Singer to describe them all, because the same designation could not possibly have indicated many different and distinct things. The fallacy in the argument lies in failing to distinguish between genus and species."

meaning of the term "Webster's Dictionary", therefore, is the current dictionary of that name, a book-title being the generic description of the particular book. In a secondary sense, the term "Webster's Dictionary" also means that any book bearing that name comes from the same source, and has the same qualities, and is entitled to the same authority and reputation as the other well-known Webster dictionaries.

Question not decided below.

It was assumed, but not decided, by the courts below, that Webster has acquired the secondary meaning contended for by complainant. Thus Judge Hand said:

"I have decided this case upon the assumption that the word 'Webster' had acquired a secondary meaning indicating at once the derivation of the work, and its responsible compiler. That assumption I make in deference to the decision in the First Circuit, though it is no sense authoritatively binding upon me. . . . That question I leave exactly as I find it, without deciding that the meaning exists, that it does not exist, that it has been proved, or that it has not been proved" (*Rec.*, vol. III, pp. 2068, 2069; 2094).

The fundamental question in this case has thus not been decided, and it becomes necessary to summarize the evidence upon this point. For convenience of reference and verification this evidence is abstracted and stated more in detail in the annexed appendix.

Evidence of secondary meaning.

The fact that the name "Webster's Dictionary" had acquired a distinct secondary meaning and trade

significance, identifying the complainant's publications, was abundantly established, without substantial contradiction, by every kind of evidence usual in these cases, including (a) prior adjudications, (b) prior, long, extensive, continuous and exclusive use, (c) great reputation and authority resulting in large sales, (d) numerous instances of actual deception of purchasers and other evidence of deception and confusion, (e) evidence of booksellers, scholars, educators, publishers and proof-readers. Indeed, the court judicially knows that there has been for many years a well-known Webster's Dictionary of high standing and reputation. *Adler v. The State*, 55 Alabama, 16, 23, where the court, per STONE, J., said:

We can perceive no good reason why a work of such standard authority as *Webster's Unabridged Dictionary* confessedly is, should not be used before a court or jury, whenever the meaning of an English word is brought in question. That it is a work of standard authority, is so widely known; indeed, so universally acknowledged wherever the English language is spoken, that it must be classed among the facts judicially known."

It is uncontroverted that complainant and its predecessors have always been the proprietors of this well-known work. This alone is sufficient to entitle complainant to relief against a misleading or deceptive use of the name "Webster's" in any part of the title of defendant's "British Empire," or "Crown" dictionary. It is not the book which will be judicially noticed, though it masquerades under the same name.

(A) *Prior adjudications.*

Prior adjudications in suits against other infringers have invariably found that the words "Webster's Dic-

tionary" had acquired a so-called secondary meaning and meant the complainant's publications, and have uniformly granted relief upon that theory.

In 1892 Judge Shipman found and declared that the words "Webster's Dictionary" indicated the complainant's dictionary current at that time. *Merriam v. Texas Siftings Pub. Co.*, 49 Fed. 944.

In 1906, Judge Colt, in the First Circuit, found and declared that the name "Webster", as applied to dictionaries, indicated the dictionaries then being published by the complainant, saying:

"It further appears from the evidence that from 1847 to 1889 the Merriams were the sole publishers of Webster's dictionaries, and that in 1889 the name 'Webster', as applied to dictionaries, had acquired a secondary meaning and indicated to the public the dictionaries published and sold by the Merriam Co. It further appears that since the expiration of the Merriam copyright in 'Webster's Unabridged Dictionary' in 1889, various editions of Webster's Dictionary have been published and sold by other publishers; but notwithstanding this circumstance, *it is shown by a preponderance of evidence that the name 'Webster' still indicates to the public the dictionaries published and sold by the Merriam Company.*" *Ogilvie v. Merriam*, 149 Fed. 858, 860, *affirmed* 159 Fed. 638.

All the evidence upon which the above finding was made, not purely cumulative, was reproduced in the case at bar, and much new and additional testimony to the same effect was also offered.

In 1911, the Circuit Court of Appeals for the Sixth Circuit again found that the words "Webster's Dictionary" indicated complainant's publications, and di-

rected an injunction against a misleading manner of using that name. This was reaffirmed upon the rehearing in 1912, when it was said that the secondary meaning had in fact become the primary meaning. The finding in the First Circuit was approved and followed, the court saying:

"It was found that the term 'Webster's Dictionary' had in the minds of the dictionary public *the meaning that the book so named or marked was the Merriam book*; and this finding may well rest upon sufficiently exclusive use, with public acquiescence, from 1889, when the copyright expired, till 1904 when Ogilvie published."

In the case at bar, upon the motion for a preliminary injunction, which was granted, Judge Coxe, said:

"This name by long association with the Merriams has acquired a secondary meaning and indicates to the public that a dictionary sold under the name of 'Webster' is published by the Merriams." (Not reported.)

It thus appears that for a period of almost twenty-five years last past, and until the decision below, complainant has been judicially protected in its enjoyment of the secondary meaning of the name "Webster's" and in the good will and reputation attached thereto created and earned by complainant.

(B) *Long, prior, extensive, and exclusive use.*

Complainant is the direct successor of Noah Webster in the business of compiling and publishing dictionaries. This series of dictionaries and the business of publishing them began in the year 1806, and has been continued by complainant and its predecessors

without cessation until the present time.¹ The facts with respect to every book are given in the Appendix annexed to this brief. (*Post.*)

In 1806 Noah Webster compiled and copyrighted a small dictionary entitled "A Compendious Dictionary", and published it with the title "Webster's Dictionary" upon the cover. This was the first Webster's Dictionary. In 1807, he compiled and copyrighted another small dictionary entitled "A Common School Dictionary." He then entered upon the preparation of his famous complete or unabridged dictionary, which he published and copyrighted in the year 1828. This work was entitled "An American Dictionary", for the purpose of emphasizing its distinctively American as distinguished from British characteristics,² but upon its cover it was entitled simply "Webster's Dictionary", by which name it was known in its time, and by which name every subsequent edition or revision has been likewise known. Immediately upon the publication of his large unabridged dictionary, Webster began the preparation of a series of small abridgments from it, and these abridgments were published and copyrighted by him as follows:

1828. Webster's Primary School & Counting House Dictionary.

1829. Webster's Dictionary. ("Octavo Abridgment").

1833. Webster's Primary Dictionary.

1837. Webster's High School Dictionary.

1841. Webster's Dictionary. ("Octavo Abridgment", New Edition.)³

¹See title pages and copyright certificates, *Rec. vol. I*, pp. 671 to 781. See also "Abstract of testimony" in Appendix, *post*, p. 1 *et seq.*

²See Webster's preface to Edition of 1828.

³See Abstract of Testimony in Appendix, *post*, pp. 1-8.

In 1840 Noah Webster prepared, published and copyrighted a new and revised edition of his unabridged "American Dictionary" of 1828. This was likewise entitled, upon the cover, "Webster's Dictionary," and took the place of the previous edition of the same work. In 1843 this book was republished with a supplement, and in that year Noah Webster died.¹

The Webster heirs forthwith pooled their interests and authorized the executors to act at their discretion for the joint benefit of all.² In 1843, G. & C. Merriam purchased from the Webster estate the unsold remainder and the copyright of Webster's Unabridged Dictionary,³ and immediately began the preparation of a new and revised edition of it, which was completed, published and copyrighted by them in the year 1847. By this time Webster's Dictionary had acquired a great reputation, and the book had become a standard authority in this country as to definition, spelling and pronunciation. This reputation and good will went with the work to the Merriams, and was continued and increased by their 1847 and subsequent editions.⁴

In the meanwhile, the abridged "Webster" dictionaries above referred to, continued to be published and sold under the Webster copyrights and licenses, and Webster's estate prepared and copyrighted cer-

¹*Rec. vol. I*, pp. 676, 725, and see Dictionary filed as exhibit.

²See "Delegation of Power to Executors by Heirs." *Rec. vol. I*, p. 809.

³See preface to Webster's International Dictionary, and "Early Contracts and Assignments," *Rec. vol. I*, pp. 783 *et seq.*

⁴This is shown by practically all the witnesses. See *Rec. vol. I*, fols. 404; 749; 722; 809; 839; 1022; 1186; 1263; 1294; 1330-1337; 1361; 1365; 1424; 1453-1455; 1560; 1561; 1567; 1867-1869; 1873-4; 1890-1; 1928-1930; 2000. See also Exhibit, "Webster in the Courts," *Rec. vol. I*, p. 853 *et seq.*

tain new or revised editions of such abridgments as follows:

Webster's Academic Dictionary.

Webster's University Dictionary.

Webster's Pocket Dictionary.

Webster's Dictionary, ("Octavo Abridgment", 3rd Ed.)¹

In 1853, three years before the expiration of the copyright upon the original Webster's Unabridged Dictionary of 1828, which was the basic copyright of the whole series of "Webster's" dictionaries, and for the declared purpose of making a permanent arrangement, an agreement was entered into between Webster's children and Messrs. G. & C. Merriam, which is in evidence as the "Webster contract of 1853." By this agreement, the renewal copyright was sold and assigned to the Merriams, who were expressly authorized to make and copyright for themselves new and revised editions and abridgments. This was the first time such authority had been granted. Prior licensees had merely printed and sold, under royalty contracts, specific books prepared, copyrighted and owned by Webster, or his estate. In 1855, a supplementary and confirmatory agreement was made between the Webster heirs and the Merriams. As there were outstanding licenses under previous contracts with Webster or his estate, authorizing the publication of certain abridged dictionaries belonging to Webster's estate, G. & C. Merriam purchased and took an assignment of all such outstanding licenses and contracts, with the consent of Webster's Execu-

¹See Abstract of Testimony in Appendix, *post*, pp. 5, 6, 10. Also *Rec. vol. I*, pp. 676, 678, 732, 733, 734.

tors. The last outstanding license covered the "Octavo Abridgment" and the "University". This was held by Lippincott & Co., and they sold and transferred it in 1858 to the Merriams, who paid \$50,000 for it, and assumed the royalty payments to the Webster family.¹ The result of these various purchases and agreements was to vest in the Merriams all the rights of Noah Webster and his family as well as of his licensees to any dictionary ever written or published by Noah Webster. Complainant is thus the successor, not only of Noah Webster, but also of all his licensees.

From 1806 to 1847 every dictionary, large or small, bearing the name Webster, came from one common source, had one responsible supervision, and all were united in one common proprietorship—that of Noah Webster and his heirs. The Webster agreements transferred all these books, with whatever reputation and good will they had attained, to Messrs. G. & C. Merriam, of whom the complainant corporation is admittedly the corporate successor.² From that time on, for a period of forty-two years, the Merriams were the common source and the sole proprietors of all Webster dictionaries, both large and small, published in the United States. Under the sole direction, responsible supervision, and ownership of the Merriams, the Webster's Dictionary was developed and kept abreast of the times, reflecting and recording in its successive editions, revision and corrections, the rapid and wonderful advance in learning, science, invention and the useful arts.³

¹See "Early Contracts and Assignments," *Rec. vol. I*, pp. 783-812, and Abstract of Record in Appendix, *post*, pp. 3, 4.

²See also "Chronological Statement of the Publication of 'Webster' Dictionaries," in Abstract of Record in Appendix, *post*, p. 1 *et seq.*

³See *Abstract of Testimony* in Appendix, *post*, pp.

Beginning in 1847, and continuing down to the present date, the Merriams have compiled, published, copyrighted and owned a long line of "Webster" dictionaries, both unabridged and abridged. Each successive edition was based upon, and was a revision and an enlargement or abridgment of preceding editions. The full list, with copyright dates, is given in a foot-note.¹ The latest editions of each of these publications are the dictionaries now being sold by complainant, and each of these publications of the com-

¹*Complainant's Publications.* (*Rec. vol. I*, pp. 667-781).

- 1847. Webster's Dictionary, Unabridged.
- 1856. Webster's Academic Dictionary.
- 1856. Webster's School Dictionary.
- 1856. Webster's High School Dictionary.
- 1856. Webster's Counting House & Family Dictionary.
- 1857. Webster's High School Dictionary, (Revised Edition).
- 1859. Webster's Dictionary, Unabridged.
- 1860. Webster's Dictionary. "Octavo Abridgment."
- 1863. Webster's Army & Navy Dictionary.
- 1864. Webster's Dictionary, Unabridged.
- 1867. Webster's Primary Dictionary.
- 1867. Webster's Academic Dictionary.
- 1867. Webster's Common School Dictionary.
- 1867. Webster's People's Dictionary.
- 1867. Webster's New Counting House & Family Dictionary.
- 1868. Webster's High School Dictionary. Revised Edition.
- 1869. Webster's Pocket Dictionary.
- 1875. Webster's Dictionary, Unabridged.
- 1877. Webster's Handy Dictionary.
- 1879. Webster's Dictionary, Unabridged. New Edition with Supplement.
- 1884. Webster's Unabridged Dictionary, Subscription Edition with Historical Supplement.
- 1884. Webster's National Pictorial Dictionary.
- 1884. Webster's Condensed Dictionary.
- 1884. Webster's Practical Dictionary.
- 1886. Webster's National Pictorial Dictionary. Subscription Edition, with Compendium.
- 1890. Webster's International Dictionary, Unabridged.
- 1892. Webster's High School Dictionary.

plainant is known to the public under the short name of Webster's Dictionary.¹

Since the death of Noah Webster in 1843, the Merriams have four times revised and enlarged Webster's Unabridged Dictionary by adding thousands of new words which have come into use and by revising old definitions of words as modified by modern usage. These were the editions of 1847, 1864, 1890 and 1909. After each revision, new abridgments were made, taking the place of the old and keeping the small dictionaries in conformity with the latest unabridged edition.²

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- 1892. Webster's Primary School Dictionary.
 - 1892. Webster's Common School Dictionary.
 - 1895. Webster's Academic Dictionary.
 - 1896. Webster's Counting House Dictionary.
 - 1898. Webster's Collegiate Dictionary.
 - 1898. Webster's International Dictionary. "Australasian Edition."
 - 1898. Webster's International Dictionary. "Historical Supplement."
 - 1900. Webster's International Dictionary. "New Edition with Supplement."
 - 1903. Webster's Unabridged Dictionary, with Appendix and Supplement.
 - 1905. Webster's Little Gem Dictionary.
 - 1905. Webster's International Dictionary, "Australasian Edition."
 - 1906. Webster's Condensed Dictionary.
 - 1906. Webster's Practical Dictionary.
 - 1909. Webster's Condensed Dictionary.
 - 1909. Webster's New International Dictionary, Unabridged.
 - 1910. Webster's Collegiate Dictionary, with Supplement.
 - 1910. Webster's Practical Dictionary.
 - 1911. Webster's Little Gem Dictionary.

This list does not include any of the earlier books which were assigned to the Merriams. It is limited to books first and continuously published, copyrighted and owned by the Merriams themselves.

¹See "Abstract of the Testimony" in Appendix, *post*, pp. 41 *et seq.*

²See "Chronological Statement of the Publication of 'Webster' Dictionaries," Abstract of Testimony in Appendix, *post*, pp. 1 *et seq.*

The evidence shows that the Merriams secured for their books the best results of the highest scholarship. Thus, the series has been built up and developed by a long line of distinguished editors, scholars and contributors, among whom may be named: Chauncey A. Goodrich, Professor at Yale, the son-in-law of Noah Webster; Noah Porter, President of Yale; Prof. William D. Whitney; Daniel C. Gilman, President of Johns Hopkins; Professors Edward S. Sheldon and Leo Wiener of Harvard; Arthur T. Hadley, President of Yale; Dr. W. T. Harris, United States Commissioner of Education, and George L. Kittredge of Harvard. Through these men and their co-workers, the Merriams have built up the Webster's Dictionary from a vocabulary of 70,000 words defined by Noah Webster, to 114,000 words defined in the revision of 1864; to 175,000 words defined in the revision of 1890; to 200,000 words defined in the edition of 1900; and to about 400,000 words and phrases in Webster's New International Dictionary of 1909.¹ Their literary labors alone have cost the Merriams the sum of one million one hundred thousand dollars (\$1,100,000) since the 1847 edition was superseded.² As a result, the Webster Dictionaries of complainant have become a standard authority of the English language in every civilized country of the globe.³

In addition to the large sums (\$1,100,000) expended by the Merriams for the literary work of their revised editions, they have spent an additional sum of over \$1,900,000 in advertising their Webster diction-

¹See Prefaces to Webster's International Dictionary of 1890, and Webster's New International Dictionary of 1909.

²*Washburn, Rec. vol. I, fol. 534.*

³*Washburn, Rec. vol. I, p. 134.*

aries under that name; more than 86,000,000 circulars, in addition to newspaper and magazine advertising, have been distributed, and for many consecutive years more than \$50,000 annually has been spent for advertising. In short, the name and reputation of Webster's Dictionary has been built up by complainant and its predecessors through more than sixty years of effort, and at a cost of over \$3,000,000.¹

More than 12,000,000 copies of complainant's Webster dictionaries have been sold since 1864, and for many years these dictionaries have been the officially adopted standard dictionary authority for school use. This school use has been practically universal, covering every section of the country, and almost every witness in the case dates his first knowledge of Webster's Dictionary from his use of it in his school days.² In buying defendant's book they thought they were getting this standard work, and so testified. Of course, they were deceived. No Webster dictionaries other than complainant's have been thus adopted and used in the schools.³ Moreover, the various courts of the country have for many years used complainant's dictionaries as a standard authority, citing them as "Webster's Dictionary," which has always indicated the complainant's publications.⁴

This long, prior, extensive and exclusive use of the name "Webster" in the title of dictionaries, the reputa-

¹*Washburn, Rec. vol. I, fols. 532-534.*

²*Washburn, Rec. vol. I, fols. 859-887; 707-712.* In *Doan v. American Book Co.*, (C. C. A.) 105 Fed. 772, 777, Jenkins, C. J., said: "It is the duty of a court of equity to protect these children from imposition."

³*Rec. vol. I, fols. 883-887.*

⁴See Exhibit—"Webster in the Courts," *Rec. vol. I, pp. 853-888; Van Dyck, Rec. vol. I, pp. 335-337.*

tion and intrinsic merit of the books, and the great sales and extensive use of these books in the homes and schools of the country, have necessarily given the name "Webster" a trade significance as applied to dictionaries. At any given date, these words in the title of a dictionary have had the meaning of a dictionary of the established series prepared under the responsible supervision of the same interests that had prepared the previous editions of the work of that name. This is and has always been the natural and well understood meaning of the name "Webster's" as used in the title of dictionaries. Many actually deceived purchasers of defendant's book so testified,¹ and there is much other evidence establishing the fact.²

(C) *Authority, reputation, and character of respective books as a means of deception.*

The court will take judicial cognizance of the high standing, reputation and authority of Webster's Dictionary as a work of reference (*Adler v. State*, 55 Ala. 16, 23), but, if not, that fact has been directly testified to by substantially all the witnesses. The dictionary which has this reputation and authority is the dictionary of complainant, G. & C. Merriam Company, and no other.³ The small or abridged Webster's dictionaries conform, and are expected to conform, to the large or unabridged edition which is the ultimate authority in-

¹Lutz, fols. 1185-1189, 1192; Burlingham, fols. 1272-1277; Crossman, fol. 813; Foley, fols. 1115-1121; Newberry, fol. 1620; McMahon, fol. 1226; Timms, fols. 1368-1369, 1375; Fisher, fol. 1340; Hughes, fols. 1287-1289.

²See *Abstract of Testimony* in Appendix, *post*, pp. 41 *et seq.*

³*Rec. vol. I*; Putnam, fols. 1560, 1561; Funk, fols. 1453-1455; Martin, fols. 1928-1930; Mead, fols. 1890-1891; Wadlin, fols. 1867-1869; Draper, fols. 1999-2002; Van Dyck, fols. 1330-1337.

voked by the name "Webster." They contain the results of the same scholarship, and so far as consistent with the size and scope of the book, contain the same literary contents as the larger books.¹ Many deceived purchasers testified that they bought defendant's book thinking that it was an abridgment of the current, genuine Webster's Dictionary, unabridged.² Practically every witness in the case has referred to the great reputation of Webster's dictionaries, and deceived purchasers relied upon that reputation as a guaranty of excellence when they bought defendant's book stamped with that name.³ They were, of course, deceived when they did not get the book with the Webster reputation, but instead got the "British Empire," *i. e.*, the "Crown" Dictionary. They were none the less deceived, whether or not the book was remotely descended from, or connected with an early genuine "Webster's Dictionary", especially in view of the fact that it is, under the decision below, five generations removed from the alleged common ancestor, no one of which bore the name Webster within a period of over sixty years. The genealogy of this book, as now claimed for defendant, is: (1) "Webster's

¹*Rec. vol. I, Washburn*, fols. 709, 705; *Van Dyck*, fol. 1351; *Putnam*, fols. 1568, 1569. "The smaller dictionaries are considered as abridgments of the large work, but with exactly the same nature and authority of statement" (fols. 1568, 1569). "They assume that the small school editions used by them are merely the epitome of the exhaustive work, kept revised and just as accurate and up to date as the large work. They assume that if their teacher who has the International [*i. e.* Webster's] Dictionary on his desk for reference, gives them the abridged book to work from, that he is not giving them a book which will not agree as to statements with the exhaustive work" (fols. 1579, 1598).

²*Rec. vol. I; Seybel*, fols. 1404-1405; *McMahon*, fols. 1237-1239; *Hughes*, fol. 1295; *Haymaker*, fols. 1504, 1505, 1536.

³See *Abstract of Testimony* in Appendix, *post*, pp. 41 *et seq.*

New Standard Dictionary" (1908-1911), which was a reprint of (2) "The Crown Dictionary" (1904-1908), which was a reprint of (3) "The Student's Imperial Dictionary" (1899-1904), which was a reprint of (4) "The British Empire Dictionary" (1899-1904), which the Court below found was based in some degree upon (5) the 1883 edition of the English "Imperial Dictionary" (1850-1889), of John Ogilvie, which the court below found was based upon (6) "Webster's Dictionary" of 1847 or prior date.¹

Surely the court below erred in finding it to be immaterial that "the intermediate sources did not go by the name Webster" (*Rec. vol. III*, p. 2064), because the present authority and reputation of Webster's Dictionary rests upon the "intermediate" editions of complainant, and the direct, uncontradicted evidence from witnesses on both sides is that "when the public uses 'Webster'", it does "understand that all the intermediate steps shall have been so named." Complainant's witness, Fisher, a school teacher, who was deceived into buying defendant's book, testified:

"Q. What do you mean by 'a real Webster'?

A. One that has been called nothing but a 'Webster'; always been a 'Webster' from the original Webster. . . . I don't see why they would ever call it anything but a Webster; I don't see what reason they would have to change the name of it. . . . I think if I started out to buy a 'Webster' I would not want one that had been called something else some other time. . . . If I thought it was ever called 'The Crown', I don't suppose I would ever have bought it,—if it had ever been called anything but a 'Webster'" (*Rec. vol. I*, p. 438).

¹See dictionary exhibits. See also *Opinion below*, *Rec. vol. III*, pp. 2062-2065.

Defendant's witness, Prof. Rolfe, also testified directly that a book of the literary descent and antecedents of defendant's book, as found by the court below, and above described, could not properly be described as a "Webster's Dictionary" (*Rec. vol. III*, pp. 2018-2021). For certainty we quote:

"Rd-Q. 142. If, for example, the editor of this book in Webster's Illustrated Dictionary had never seen Webster's 1847, but had compiled his book entirely from Ogilvie's Imperial Dictionary, and the result had been as it is in this book, such a large percentage of material identical with Webster, would you say that it was truthfully derived from or based on Webster's dictionary? A. *I should not think it would be a natural thing to do at all, that is, if the title Webster was not given to the Imperial Dictionary*; it does not seem to me that that would be a natural thing, to term it 'Webster' from the legal [literary?] point of view; on the ethical point of view, I am sure, but from a literary point of view I should not myself use the title 'Webster' under those circumstances."

"Rx-Q. 146. If a new dictionary was compiled today, using as its main sources Cassell's English Dictionary, Chamber's English dictionary, and Ogilvie's English dictionary with more or less consultation of all other standard dictionaries, would it be in accordance with the rules and opinions which you have declared to call such a new book, 'Webster's' dictionary? A. I should think not."

Prof. Rolfe also testified that it would not be proper to re-entitle the well-known "Standard" and "Century" dictionaries, and call them "Webster's." Yet the Standard Dictionary was revised directly from Webster's Dic-

tionary of 1847, as its publisher, Dr. Funk, testified,¹ and the Century Dictionary is a revision of the Imperial Dictionary of John Ogilvie.²

Prof. Rolfe's testimony is misapprehended and misstated in the opinion below (*Rec. vol. III*, pp. 2064-5). It supports and corroborates complainant's case. But wholly apart from such testimony, it obviously does matter to purchasers who buy dictionaries in reliance upon good reputation as an assurance of worth, as all must, whether or not the book given them is the book of the name which earned and possesses that good reputation. The Webster reputation is associated only with the complainant's books, and was built up during the period when defendant's book, and its ancestors bore another name, under which it earned no reputation of its own.

It also appears, without contradiction, that it is the recent and *current copyrighted dictionaries* of the complainant which are the books used in the schools and courts, and which have the reputation and authority invoked at the present time by the name "Webster's Dictionary." This reputation and authority rest mainly upon the later editions, and especially upon Webster's International Dictionary of 1890.³ Language changes, and the dictionaries of fifty or sixty years ago have long since become obsolete and insufficient, and gone out of use. A new dic-

¹*Rec. vol. I*, p. 363.

²See said dictionaries. The Century Dictionary contains the following statement on the back of its title-page:—"By permission of Messrs. Blackie & Son, publishers of The Imperial Dictionary by Dr. Ogilvie and Dr. Annandale, material from that English copyright work has been freely used in the preparation of The Century Dictionary."

³*Rec. vol. I*, Mead, p. 473; Martin, p. 458; Van Dyck, p. 335; Putnam, p. 392; Wadlin, p. 469; Draper, p. 500.

tionary which was known to have skipped over all the recent authoritative and copyrighted Webster dictionaries, and founded itself solely upon the early edition of 1847 would not have the authority and would not be the book which is understood and identified today by the name "Webster's Dictionary." The testimony to this effect is uncontradicted.¹ In fact, the court below declared that to describe a dictionary truthfully as "one of the original Webster's dictionaries . . . would probably destroy any possibility of its sale".²

This can only mean that "Webster's Dictionary" today does not *prima facie* mean, and is not understood to mean this ancient edition; that purchasers will not buy it, except under a misapprehension, and in the belief that it is complainant's developed work. Still less would they understand that name to mean a book merely indirectly "based" upon such old edition. An indirect and remote connection with an early and obsolete edition is the utmost found by the court below as a justification for defendant's appropriation of the good will and reputation of complainant's current copyrighted Webster dictionaries.

Defendant's dictionary, in striking contrast to complainant's famous books, has no authority, standing or reputation of any kind, and especially it has not, and is not entitled to have, the reputation and authority which the genuine Webster's dictionaries do have. No effort whatever was made by the defense to show that its book has any authority or reputation. The contrary

¹*Rec. vol. I, Putnam, p. 394; Funk, p. 365; Clarke, p. 486; Draper, p. 500; Martin, p. 458; Mead, p. 474; Van Dyck, p. 337; Wadlin, p. 468.*

²*Opinion below, Rec. vol. III, p. 2059.*

plainly appears. The defendant has spent its money in a sudden burst of deceptive and unfair advertising, but has spent little or nothing to produce a meritorious book. It appears from the testimony of defendant's president, Mr. Wright, that its book is printed from certain old plates of the Crown Dictionary without any substantial change or editorial work thereon (*Wright, Rec. vol. II*, pp. 1062, 1089-1091). He refused to state how much he paid for the copyright and plates of this book, but testified expressly that he regarded the copyright upon the text of the book as of no value whatever (*Rec. vol. II*, p. 1081). It also appears from his testimony that the main sale of the book has been as a *premium* used in connection with newspapers and magazines to promote circulation (*Rec. vol. II*, p. 1125). Books of established reputation and standing do not forfeit it by change of name. Defendant's book has frequently changed its name. This book without substantial change in its literary contents has borne successively all of the following names, viz:—"British Empire Dictionary," "Student's Imperial Dictionary," "Crown Dictionary," "Student's New Century Dictionary," and then it assumed the *alias* under defendant's auspices, of "Webster's New Illustrated Dictionary," subsequently changed to "Webster's New Standard Dictionary." And under the auspices of Cupples & Leon Co., defendant in the companion suit to this, the same book is sold concurrently under the *alias* of "Webster's New Century Dictionary." (See *Dictionary Exhibits*.) The book is also given away in large quantities as a premium with carbon and typewriter supplies, and with a title page containing an advertisement of those useful articles (*McCarthy, Rec. vol I*, p. 292).

It also appears that in many respects defendant's dictionary is a slovenly and inaccurate production. Defendant's expert, Professor Peck, has so characterized certain features (*Peck, Rec. vol. III*, p. 1672; 1667-1677). That this characterization of "slovenly" is deserved, appears from the errors and inaccuracies in spelling, definitions, and general misinformation pointed out in the book, among which may be mentioned the meaningless "mixed definitions," caused by a careless conveying of matter from the British Empire Dictionary into the Crown Dictionary, and carried forward into defendant's dictionary (*Mawson, Rec. vol. I*, pp. 522-540); also erroneous and inadequate definitions, which have been pointed out (*Washburn, Jr., Rec. vol. I*, pp. 198-202; *Baker, Rec. vol. I*, pp. 126-128); also the total omission of definitions caused by cross-references to words not contained or defined in the book (*Mawson, Rec. vol. I*, pp. 538, 539). Numerous other errors and inaccuracies have been pointed out by the testimony (*Rec. vol. I, Mawson*, pp. 522-540; *Washburn, Jr.*, pp. 198-202; *Baker*, pp. 126-128).

More important still is the fact that numerous words in defendant's dictionary are spelled according to the English form of spelling, where that form is different from the accepted American form of spelling such words, and which has been the correct American form ever since Noah Webster himself adopted it in his early dictionary. A list of those words is contained in the Record (*vol. I, Mawson*, pp. 524-529). From the standpoint of American use and authority, these words in defendant's dictionary are wrongly spelled. In some instances, in conveying the matter from the British Empire Dictionary into defendant's dictionary, the editor did change the spelling from the English

to the accepted American form, but he left a trail leading straight to his English source by, in a few instances, forgetting to change the alphabetical order of the words to conform to the change in spelling (*Rec. vol. I*, pp. 531, 532, *Mawson*, fols. 2123-2128).

Most people must take a dictionary on faith. They regard a thing as right because the dictionary so states it. When purchasers bought defendant's dictionary upon the reputation of "Webster's Dictionary," relying upon that name as a guarantee of accuracy and quality they were, of course, grossly deceived. For example, defendant's counsel upon cross-examination of some of the deceived purchasers brought out statements like the following: Webster means, "the correct spelling and definition of words" (*Rec. vol. I*, fol. 1372). "I considered the Webster's dictionary the one giving the correct spelling and definitions" (*Rec. vol. I*, fol. 1374). "Webster conveys the idea of literary excellence." "I was satisfied to accept the spelling and definitions of any word or words contained in it" (*Rec. vol. I*, fols. 1122, 1125). "I did not give spelling a thought taking it for granted that I was purchasing a genuine Webster's Dictionary in which the spelling was bound to be correct, and never having heard of a 'Webster's Dictionary' that was not genuine" (*Rec. vol. I*, fol. 1301).

Many others testified to the same effect. It is the universal idea of Webster's Dictionary, as shown by its great reputation and recognized authority. How then can a purchaser of defendant's book, who buys on the reputation of Webster's Dictionary, be otherwise than deceived when he obtains a book of different literary contents, and filled with erroneous spelling,

British definitions and other grammatical and linguistic misinformation? In short, defendant's book is not the Webster's Dictionary of authority and reputation, and therefore is not the book which purchasers expect to get when they buy it, and the use of the name, "Webster's" thereon is a false and fraudulent misrepresentation.

Several purchasers have testified that they were dissatisfied with defendant's dictionary because it did not contain words which they expected to find therein (*Rec. vol. I:—Kronvall*, fols. 846, 847; *Catharine*, fol. 1393; *Cowles*, fols. 409, 410).

The vast majority of purchasers, however, will accept and follow the erroneous information given by defendant's book, because they think it is the genuine Webster's Dictionary, and therefore is necessarily correct. Many persons have been deceived who will never discover the fact that they have been deceived.

(D) *Actual deception of purchasers and others.*

The best evidence of "secondary meaning," unfair competition, and infringement of trade-marks, is the testimony of ordinary and average purchasers who have been actually deceived, and have had passed off upon them defendant's book as and for complainant's book.¹

Twenty-two purchasers of defendant's dictionary were called as witnesses, and told for themselves how

¹A learned English Judge has said of this class of evidence: "If one case of actual deception is proved, there is no more to be said on either side. The case is at an end. Argument really only takes place where there is no proved case of actual deception," per Kekewich, J., in *Liebig Extract of Meat Co. v. The Chemists Co-operative Socy.*, 13 Rep. Pat. Cas. 635, affirmed on appeal, 13 Rep. Pat. Cas. 736.

they had been deceived.¹ More would have been unjustifiable cumulation. Complainant's field agents, covering a wide territory, testified to specific instances of deception which had come to their notice, and to direct loss of sales due to defendant's competition,² and there was other evidence showing actual deception and confusion from defendant's use of the title Webster's Dictionary.³ Some of the purchasers of defendant's dictionary testified that they bought in the belief that they were obtaining a dictionary of the Merriams whom they knew by name as the publishers of Webster's Dictionary.⁴ Every purchaser testified that it was the name "Webster's Dictionary" which induced him to buy defendant's book,⁵ and all of them testified

¹*Rec. vol. I:—Seybel*, fols. 994-1028; *Hughes*, fols. 1279, 1313; *Cooper*, fols. 444-477; *Cowles*, fols. 401-422; *Kronvall*, fols. 837-847; *Pulcifer*, fols. 825-835; *Clark*, fols. 748-776; *Crossman*, fols. 808-822; *Rogers*, fols. 778-790; *Smack*, fols. 1414-1446; *Catharine*, fols. 1385-1400; *Geldart*, fols. 1401, 1411; *Timms*, fols. 1360, 1377; *Burlingham*, fols. 1249-1273; *McMahon*, fols. 1206-1245; *Lutz*, fols. 1189-1197; *Foley*, fols. 1109-1150; *Gash*, fols. 1079-1108; *Fisher*, fols. 1733-1758; *Hagarty*, fols. 1759-1771; *Wells*, fols. 1661-1675; *Newberry*, fols. 1607-1626; *Boynton*, fols. 719-747; *Bond*, fols. 423-443; *Condit*, fols. 1550-1554.

²*Rec. vol. I: Adams*, fols. 1969, 1979-1990; *Haymaker*, fols. 1470-1546; *Robinson*, fols. 1628-1653; *Porter*, fols. 1677-1732; *Buddecke*, fols. 1030-1078; *Gifford*, fols. 954-973. See Abstract of Testimony in Appendix.

³See Abstract of Testimony in Appendix, *post*, pp. 41 *et seq.*

⁴*Rec. vol. I: Seybel*, fols. 994-1028; *Hagarty*, fols. 1759-1771; *Cooper*, fols. 444-477; *Pulcifer*, fols. 825-835; *Rogers*, fols. 778-790; *Cowles*, fols. 401-422; *Kronvall*, fols. 837-847; *Crossman*, fols. 808-822; *Clark*, fols. 748-776.

⁵See Abstract of Testimony, *post*, pp. 41 *et seq.* *Rec. vol. I: Hughes*, fols. 1311, 1294; *Kronvall*, fols. 1841, 1842; *Hagarty*, fols. 1768, 1769; *Seybel*, fol. 1002; *Fisher*, fols. 1743-1759; *Newberry*, fol. 1611; *McMahon*, fol. 1213.

that they bought the book without first examining it, relying solely upon the name "Webster" as an assurance of accurate and authoritative contents.¹ These witnesses say that they did not intend to buy the "Crown" dictionary and did not know that they had in fact bought it.² Most of them had never heard of the "Crown" dictionary, and some gave that as a reason for saying that they would not have bought defendant's book if they had known that it was merely a reprint of the "Crown".³ One witness had heard of the Crown, but did not intend to buy a copy of it.⁴ Another already had a copy of the "Crown" Dictionary at home and did not intend to buy another copy of it when he bought defendant's dictionary, but did intend to buy a "Webster's Dictionary".⁵ Many deceived purchasers did not know the specific name of the publisher or proprietor of the Webster dictionaries which they had long known as a standard work. They assumed that all Webster dictionaries came from one concern, and did not know that there were any so-called Webster dictionaries which were not produced by this definite concern whose name and address they did not know. They intended to buy the well known Webster's Dictionary, and decided to buy it because

¹*Rec. vol. I: Foley*, fols. 1115-1121; *Smack*, fols. 1419, 1424; *Lutz*, fol. 1197; *Hughes*, fols. 1291, 1301; *Pulcifer*, fols. 831-832; *Hagarty*, fols. 1768, 1769; *Seybel*, fols. 1003, 1023.

²*Rec. vol. I: Hagarty*, fols. 1770-1771; *Pulcifer*, fols. 834-835; *Cowles*, fols. 413-414; *Clark*, fols. 758-759; *Hughes*, fols. 1303-1304; *Fisher*, fols. 1743-1758.

³*Rec. vol. I: Pulcifer*, fol. 835; *Fisher*, fols. 1743-1758.

⁴*Rec. vol. I: Cowles*, fols. 413-414.

⁵*Rec. vol. I: Kronvall*, fols. 843-844.

of its great reputation.¹ They were deceived because they did not get the book they thought they were buying. They did not get a book which had that reputation and history. They got a book of different contents, and without the guaranty of excellence implied in the word "Webster's." This attitude of the public mind is well illustrated by the extracts from the testimony printed in the accompanying abstract.²

The evidence of purchasers who were actually deceived in buying defendant's book corroborated the testimony of complainant's salesmen and of disinterested booksellers. The latter, shown to have had wide and long experience in the retail sale of dictionaries, testified that to the general public the name, "Webster's Dictionary" means one of the current dictionaries known by that name, published and sold by the Merriam Company, and that the public has been widely deceived by *bogus* Webster dictionaries issued in recent years.³

A magazine which had finished publishing defendant's advertisement, in returning the plate or cut of defendant's dictionary, sent it by mistake to complainant at Springfield, Mass. The name "Webster" on the cut was the only thing to connect it with

¹*Rec. vol. I: Hughes*, fols. 1279-1313; *Lutz*, fols. 1189-1197; *Fisher*, fols. 1733-1758; *Smack*, fols. 1414-1446; *Timms*, fols. 1360-1377; *Geldart*, fols. 1401-1411; *Burlingham*, fols. 1249-1273; *Foley*, fols. 1109-1150; *McMahon*, fols. 1206-1245; *Newberry*, fols. 1607-1626. See also *Abstract of Testimony*.

²See *Abstract of Testimony* in Appendix, *post*, pp. 41 *et seq.*

³*Rec. vol. I: Adams*, fols. 1964-1995; *Buddecke*, fols. 1029-1078; *Clarke*, fols. 1937-1963; *Gifford*, fols. 953-994; *Haymaker*, fols. 1470-1546; *Porter*, fols. 1677-1732; *O'Neill*, fols. 1857-1864; *Robinson*, fols. 1628-1656; *Funk*, fols. 1448-1467; *Putnam*, fols. 1558-1604; *Wadlin*, fols. 1869-1875. See *Abstract of Testimony* in Appendix.

the complainant.¹ A bookseller of Boston testified that he received an order for a so-called "Webster's Sterling Dictionary," and not having the book in stock ordered a copy from G. & C. Merriam Co., because: "The name of Webster was called for on the dictionary."² This book is one of the bogus Webster dictionaries published by Saalfield which have been enjoined. Numerous letters containing orders and inquiries for spurious Webster dictionaries have been sent by mail to the Merriam Company. These letters are printed in the record,³ and they show the widespread deception and confusion by the use of the name "Webster" in advertisements, and the identification of the name "Webster" with the Merriam Company and its dictionaries. It is significant that so many of such letters should have been sent to the Merriams in view of the fact that the advertisements of these spurious Webster dictionaries must have always contained the name and address of the infringing dealer.

(E) *Educators, scholars, literary men, publishers, proof-readers, and book-sellers.*

A large number of prominent and disinterested educators, scholars, literary men, publishers, proof-readers and book-sellers have testified unanimously to the effect that the name "Webster's Dictionary" means the *current* dictionaries published by the Merriams, and no

¹*Rec. vol. I, fols. 478-486.* See also the plate itself, filed as an exhibit. As was said in a case where a defendant's imitation article was sent to the maker of the genuine article to be repaired: "Such a demonstration of fact is worth any amount of hypothesis." *Enterprise v. Landers*, 124 Fed. 923-927.

²*O'Neill, Rec. vol. I, pp. 465-6.*

³*Washburn, Rec. vol. I, pp. 136-158; 222-233.*

other. They testify to the great reputation and high standing of the Webster's dictionaries published by the complainant, and say, what is unquestionably true, that that reputation rests upon the *current* dictionaries of the complainant *now in general use*.

They all agree that the name "Webster's Dictionary" does not now refer to or mean the obsolete dictionary of the year 1847; that a reference to Webster's Dictionary would not today be understood to refer to the edition of 1847, and that an order to a book-seller for Webster's Dictionary would not today be properly filled by a copy of the edition of 1847. They also testify that a dictionary even though "based" upon the 1847 edition, but prepared by other than the established publishers of the existing well-known Webster's Dictionary, and not based upon or abridged from the intervening recent editions of Webster's Dictionary upon which the reputation and popularity of Webster's dictionaries now rests, would not have the authority, or be the book, generally understood and intended today by the term "Webster's Dictionary."¹

The theory of this line of testimony is simply this: A person buys a dictionary to use it as an authority upon questions of language. If he prefers the authority of the "Standard Dictionary," or of "Worcester's Dictionary," or of the "Century Dictionary," he buys one of those dictionaries. If he prefers the authority of "Webster's Dictionary" he buys a copy of "Webster's Dictionary," and naturally expects and de-

¹*Rec. vol. I: Putnam, p. 390; fols. 1557-1604; Funk, p. 362; fols. 1448-1468; Clarke, p. 485; fols. 1937-1963; Draper, p. 500; fols. 1997-2004; Martin, p. 457; fols. 1825-1856; Mead, p. 472; fols. 1887-1936; Van Dyck, p. 332; fols. 1325-1359; Wadlin, p. 467; fols. 1865-1886. See also abstract of this testimony in Appendix.*

sires to receive the book, which has the distinctive authority and reputation which caused him to select "Webster" rather than "Worcester," or the "Standard," or the "Century." Complainant's Webster's dictionaries admittedly and unquestionably are the books which have the authority and reputation which attach to Webster's Dictionary today. Defendant's book is an English book, not even "based" upon the 1847 edition. But even if it were in some degree based upon the 1847 edition of Webster's Dictionary, it still would not be the book which today has the reputation and standing which all agree the complainant's dictionaries have. A purchaser of defendant's dictionary buying in the belief that it is the famous and authoritative dictionary is unquestionably deceived and does not get the book he intended to buy. He intended to buy the Merriam Company's dictionary, and this is true whether or not he knows that Merriam is the name of the publisher of the dictionary which he likes and desires to buy.

Attention is specially called to the deposition of Irving Putnam of G. P. Putnam's Sons, the well known publishers and book-sellers. He is in a position to know; is absolutely indifferent between the parties, and his testimony is clear and convincing (*Rec. vol. I*, p. 390, fols. 1557-1604).

The testimony of Isaac K. Funk, president of Funk & Wagnalls' Company, who are the publishers of the well known "Standard Dictionary," complainant's chief competitor, is also entitled to great weight. His testimony shows that the name "Webster's" is universally understood to mean the Merriam Company's recent dictionaries, and that a new book by other publishers, even if in some part based upon the 1847 edition, would not be the book which is today understood as a Webster's Dictionary (*Rec. vol. I*, p. 362, fols. 1448-1468).

Defendant's opposing evidence and arguments on question of secondary meaning.

The existence of "secondary meaning" in any case is always purely a question of fact to be determined upon the evidence. *Howe Scale Co. v. Wycoff, Seaman & Benedict*, 198 U. S. 118; *Cellular Co. v. Maxton*, 1899 App. Cas. 344, per Lord Halsbury. The foregoing review of the testimony would seem to establish the "secondary meaning" of the name Webster in this case to the point of demonstration. It is wholly without substantial contradiction, and much of defendant's evidence corroborates it. It is worth noting that *defendant did not call one single purchaser of its book* to testify as to what he thought he was buying. The testimony of the deceived purchasers called by complainant must be taken as fairly representing the attitude of the ordinary and average purchaser, as indeed it is.

Defendant's negative case on the question of secondary meaning consists of the following positions, viz.:

- (1) A claim that the public generally do not know the name of the publisher of the Webster's Dictionary;
- (2) A denial that complainant and its predecessors were the "original publishers," or that they were ever or for any period the exclusive "publishers" of Webster dictionaries.
- (3) The existence in recent years of other dictionaries bearing the name Webster's.

Defendant's evidence on this subject will be briefly summarized, and the answer to it indicated.

(1) *Knowledge of name of publisher.*

Substantially the whole of defendant's testimony upon the question of "secondary meaning" is directed to establishing the proposition that the ordinary purchaser does not know the name of the publishers of Webster's Dictionary. This was admitted and proved by complainant, who asserts and relies upon it. It supports complainant's case by demonstrating that the title is deceptive notwithstanding the publisher's name in the imprint. Defendant, and its witness, argue from this fact that "Webster" cannot have a secondary meaning and does not indicate the Merriam's books. This is a common fallacy, often refuted by the Courts,¹ and conclusively disproved by the testimony in this case.

It is, indeed, the typical situation in all trade infringement cases. The ordinary and average purchaser buys by the name or brand, and when he asks for "B. V. D." underwear, or a "Carolina" Cigar, or an "Arrow" collar, or a "Worcester," or other named dictionary, it is a particular make of article he desires, coming from a common and original source, and if he is given a substitute coming from a different source he is deceived, although he may neither know nor care who actually makes the brand of goods or prints the book which he prefers. In *Birmingham Vinegar Brewery Co. v. Powell*, [1896] 2 Ch. 54, 68; 14 R. P. C. 720, [1897] A. C. 710, 716, in answer to the argument that the pub-

¹*Shaver v. Heller* (C. C. A.), 108 Fed. 821, 824; *Bates v. Bates*, 172 Fed. 892, 897; *Faulder v. O. & G. Rushton*, 20 Rep. Pat. Cas. 477, 485; *Powell v. Birmingham Vinegar Brewery*, [1896] 2 Ch. 54, 68, on appeal [1897] App. Cas. 710, 716; *Wotherspoon v. Currie*, L. R. 5 H. L. 508, 27 L. T. N. S. 393; *Standard, etc. Mfg. Co. v. Standard Ideal Co.*, 37 Quebec Super. Ct. 33.

lic had not identified "Yorkshire Relish," with either the complainant, or his establishment, Lord Chancellor Halsbury said, ([1897] App. Cas. p. 713):

"It may be true that *the customer does not know or care who the manufacturer is*, but it is a particular manufacture that he desires. He wants 'Yorkshire Relish' to which he has been accustomed, and which, it is not denied, has been made exclusively by the plaintiff for a great number of years. 'This thing which is put into the hands of the intended customer is not 'Yorkshire Relish' in that sense. It is not the original manufacture. It is not made by the person who invented it. Under these circumstances it is a fraud upon the person who purchases to give him the one thing in place of the other."

And Lord Herschell further remarked (p. 715):

"I think that *the fallacy of the appellants' argument rests on this*—that it is assumed that one trader cannot be passing off his goods as the manufacture of another unless it be shown that the persons purchasing the goods know of the manufacturer by name, and have in their mind when they purchase the goods that they are made by a particular individual. It seems to me that one man may quite well pass off his goods as the goods of another if he passes them off to people who will accept them as the manufacture of another, though they do not know that other by name at all. In the present case, it seems to me that 'Yorkshire Relish' meant the manufacture of a particular person. I do not mean that in the minds of the public the name of the manufacturer was identified, but that it means a particular manufacturer, and that when a person sold 'Yorkshire Relish,' as the appellants did, by selling it as 'Yorkshire Relish,' and calling it 'Yorkshire Relish,' they represented to the public that

it was that manufacture which was known as and by the name of 'Yorkshire Relish.'"

In the Court of Appeals, whose decision was affirmed by the House of Lords, *supra*, Lindley, L. J., said:

"Persons may be misled and may mistake one class of goods for another, although they do not know the names of the makers of either. A person whose name is not known, but whose mark is imitated, is just as much injured in his trade as if his name were known, as well as his mark. His mark as used by him has given a reputation to his goods. His trade depends on such reputation. His mark sells his goods. A rival who imitates his mark can hardly help deceiving buyers and injuring him; and for such injury, if proved, he can obtain redress."

In *Wotherspoon v. Currie*, L. R., 5 H. L. 508, 27 L. T. (N. S.) 393, Lord Chancellor Hatherly said:

"It may very well be that hundreds of people like 'Glenfield Starch' and order it because they think that it is the best starch that they ever used, without ever having heard of the name of Mr. Wotherspoon, and without knowing him at all. They say, I want the thing that bears that name, the thing made in a particular way, made by the manufacturer who makes it in that way, and there being only one manufacturer who does make it in that way, I want the article made by that manufacturer."

In *Bates Mfg. Co. v. Bates Numbering Mach. Co.*, 172 Fed. 892, 897, the Court said:

"A trade name is usually more striking than the name of its user. It is likely to give more information about the product and calculated to make a more lasting impression on the mind than a mere trade-mark. *Where such trade-*

*name of the product is dissimilar to that of the manufacturer, it is likely to be remembered, even though the name of the person entitled thereto is overlooked or forgotten. Faulder & Co., Ltd. v. O. & G. Rushton, Ltd., 20 R. P. C. 477.*¹ In such a case such trade-name obtains a secondary meaning, even though in its primary sense it is not subject to the exclusive ownership of the trader."

In *Shaver v. Heller* (C. C. A.), 108 Fed. 821, 824, where the word "American" was held to have a "secondary meaning" as applied to wash bluing, Judge Sanborn said:

"The excellence of the article and the introduction which the appellee gave it . . . established the trade in it, and gave that trade its value. Purchasers in the trade and the public came to know, to demand and to buy the appellee's manufacture by this brand. One does not lose the good will of his trade in an article of his manufacture by placing upon it the names of his customers who are engaged in selling it, nor by the fact that the consumers know only the name and excellence of the article, and neither know nor care who makes it."

¹In *Faulder & Co., Ltd. v. O. and G. Rushton, Ltd.*, 20 Rep. Pat. Cas. 477 (the case above referred to), Vice Chancellor Hall said (485): "I am still on the point, whether or not the Plaintiffs' manufacture is known as 'Silverpan,' or conversely whether 'Silverpan' conveys the idea of *Faulders*, whether persons knew *Faulders*' name or not. If a man is accustomed to buy a certain brand which has become a catchword, very often he forgets the name of the maker. He might remember jam that he bought, which was undoubtedly *Faulder & Co.*'s jam, and, wishing to get the same jam again, in asking for 'Silverpan' he would buy it in the expectation of getting the same brand, that is *Faulders*' brand; therefore, I am not at all sure it was an absolute necessity that a person asking for 'Silverpan,' should have in his mind also the name of *Faulder*."

Persons who do know who is the proprietor of the genuine goods, expect to get his wares, and those who do not know the proprietor's name expect to get goods from the same source as goods they previously had known. In either case, there would be deception. *Standard Sanitary Mfg. Co. v. Standard Ideal Co.*, 37 Quebec Super. Ct. 33.

The foregoing quotations from the decisions destroy defendant's whole theory of "secondary meaning," and demonstrate the irrelevancy of its testimony offered in support of such erroneous theory.

The ordinary purchasers who have been called and examined in this case, and who have shown how they were actually deceived by defendant's book, illustrate how accurately the courts in the above quotations have apprehended the psychology of the ordinary and average purchaser. Their specific testimony also corroborates other general testimony of sales-agents, and others.¹

The attitude of the public is well summed up by complainant's witness Lutz, as follows:

"I believed that Webster Dictionary was published by one company, the name of which I did not know. . . . I believed it was a book which was published by the company which, I assumed publishes all Webster dictionaries." (*Rec. vol. I*, p. 298, fols. 1189, 1192.)

A number of salesmen from department stores and book shops testified on behalf of defendant. The substance of their testimony was that the average purchaser does not know the name of the publisher of any Webster Dictionary, or for that matter of books in general, and from this they drew the conclusion and

¹See *Abstract of Testimony* in Appendix, *post*, pp. 41 *et seq.*

expressed the opinion that the name "Webster's Dictionary" does not indicate the books of any particular publisher.

These opinions and conclusions have already been sufficiently answered both upon the law and the facts. It appears that these book-sellers all dealt directly with the publishers in procuring their stocks and were especially familiar with the names of such publishers. It also appears that they invariably carried in stock both the genuine Webster's dictionaries of complainant and other so-called "Webster" dictionaries of other publishers. Their testimony that they personally do not know what book is intended when a customer comes in and asks for either a large or small Webster's dictionary amounts to nothing. It does not show that such a customer did not have complainant's authoritative books in mind. They all testified that customers do come in and ask for a Webster's dictionary. It is a fair presumption that such customers desire the Webster's Dictionary of which they had previously known and which had a good reputation in the minds of the general public. That means complainant's book.

These witnesses of defendant described what ordinarily takes place in the course of a retail sale. They testified that a customer would come in and ask, as the case might be, for a large or small Webster's Dictionary. They would then show him a stock of books consisting of both genuine Webster's dictionaries of the complainant and various so-called Webster's dictionaries of other publishers and allow him to select the one which in size and price seemed most nearly to meet his requirements. No explanation of the difference between the established authoritative Webster's dictionaries and the other kind was ever given unless

specifically asked for by the customer. As such customer usually did not know that there was any such difference, an explanation was seldom asked for and seldom given. In other words, a customer coming in to buy a Webster's Dictionary because of the reputation and good will of complainant's books of that name was allowed to deceive himself. Showing him a stock of various books, all marked "Webster's Dictionary," was a representation that all were equally genuine and came from a common source. This is the usual way in which the fraudulent Webster dictionaries are worked off upon the public.¹

One of defendant's witnesses unexpectedly corroborated complainant's case as follows:

"Q. 13. Among those dictionaries were there Webster's dictionaries? A. Yes, sir, *both the original and reprints.* . . . x-Q. 45. You stated that you handled both original and reprint Webster's dictionaries. What book did you mean by the term 'original'? A. *That is a book published by the Merriam Company.* x-Q. 46. At that time? A. Yes. x-Q. 47. You did not mean by that term one of the early obsolete editions of Webster's dictionaries? A. No. x-Q. 48. Do you remember the full specific name as 'Webster's International Dictionary' or something of that sort? A. Webster's International. x-Q. 49. That was the book you referred to by the term 'original'? A. Yes. . . . x-Q. 64. The dictionaries of the American Book Company I presume you know are dictionaries published by the Merriams? A. *They are the*

¹*Eckle, Rec. vol. II, fols. 5648-5655; McKnight, Rec. vol. II, fols. 5708-5712; Doran, Rec. vol. II, fols. 4802-4809; Pfanstiehl, Rec. vol. II, fols. 4079-4082; Hesslein, Rec. vol. II, fols. 4042-4043; Sherwood, Rec. vol. II, fols. 4870-4881.*

Webster books, yes." (McKnight, *Rec. vol II*, pp. 1421, 1425, 1427, fols. 5683, 5699, 5706.)

This witness plainly understands that "Webster's" dictionaries are the current publications of the Merriam Company. He used the term "Webster" to distinguish such books from all others. He also knows the difference between genuine and bogus Webster's dictionaries, for he testified:

"If they want a cheap book you can show them some of these reprints; if they want a *genuine book*, you show them *the standard books*.

Q. 24. Like Funk & Wagnalls? A. Like Funk & Wagnalls. Q. And Lippincott's Worcester? A. Yes." (McKnight, *Rec. vol. II*, p. 1422, fol. 5687.)

"x-Q. 54. . . . If he wanted a genuine Webster's Dictionary, what would you show him? A. Webster's International." [i. e., Merriam's book.] (McKnight, *Rec. vol. II*, p. 1426, fol. 5703.)

A Mr. Sherwood testified for defendant that the public do not distinguish dictionaries by the names of their publishers, but that *the only way to distinguish dictionaries is BY THEIR TITLES*. (*Rec. vol. II*, pp. 1211, 1212, fols. 4841, 4847.) This is precisely complainant's contention, and it is defendant's infringing title which causes all the deception.

Another witness for the defendant testified that the average customer cares nothing about the publisher of the dictionary he buys, but that he does care about the "words and definitions" and "the literary contents of the book." (McKnight, x-Qs. 81, 82, *Rec. vol. II*, p. 1428, fol. 5712.) Another said that *the title applies to the contents* rather than the publisher of the book. (*Eckle, Rec. vol. II*, p. 1414, fol. 5656.) This is undoubtedly true, and as already shown, purchasers rely

upon the title as a means of getting the literary contents, words and definitions, which they desire, the title being regarded as a guarantee of the excellence of the contents. When they are given a re-named book of different contents than that of the authoritative Webster's dictionaries they and complainant are both defrauded.

These witnesses also testified that purchasers expect an up-to-date book, and frequently ask whether the book offered them is up to date. (*Rec. vol. II*, fol. 4839.) This shows that purchasers do know something of a series of editions of Webster's Dictionary, and indeed one of defendant's witnesses specifically so testified. (*McKnight, Rec. vol. II*, fol. 5695.) This corroborates like direct evidence upon the part of complainant.

Defendant also introduced in evidence a large amount of incompetent hearsay testimony consisting of answers alleged to have been made by various persons to a list of six questions¹ propounded to them out of court, after issue was joined, by defendant's agents for the purpose of making evidence for defendant in this case.² Objections were duly taken, and motions to

¹These questions are as follows: "1. Do you know who is the publisher or who are the publishers of 'Webster's Dictionary'? 2. When you hear or see the name 'Webster' on a dictionary does it indicate to you a dictionary gotten out by any particular publisher or at any particular place? 3. Do you know of any city or cities where any 'Webster's' dictionaries are published? 4. Do you know of any series of succeeding rewritings of 'Webster's' dictionary gotten out by any one publisher? 5. Who do you think wrote the definitions and fixed the spelling of the words to be found in the 'Webster's' dictionaries you have known about? 6. When do you think those definitions were written and that spelling fixed?" The alleged answers to these questions are printed in the *Rec. vol. II*, fols. 4105, 4932, 5232, 5821. Substantially all answers were in the negative.

²*Rec. vol. II, Skeoch*, fols. 4913 *et seq.*; *Shultz*, fol. 1297 *et seq.*; *Eckle*, fol. 5609; *Gray*, fol. 5726; *Rankin*, fol. 4994 *et seq.*

strike out duly made, and renewed at final hearing,¹ where the court ruled that the testimony was incompetent, and would be disregarded, but that it could not be stricken from the record. This evidence, if accepted, shows merely that the general public do not know the name or location of the actual publisher of the Webster dictionaries, and hence confirms the importance of the trade significance or secondary meaning of the name "Webster's Dictionary."

Naturally the man in the street does not accurately know the history and development of Webster's Dictionary. He does know that there is an existing authentic genuine Webster's Dictionary of great reputation. Complainant publishes it. That is the work he intends when he refers to, or gives an order for, a Webster's Dictionary. These unofficial *ex parte* examiners into the state of the public mind admit that among all the people interrogated *they did not find one who had not previously known of Webster's Dictionary* (*Rec. vol. II, Skeoch*, fol. 4943; *Gray*, fol. 5758; *Shultz*, fol. 5560).

Some said they had known Webster's Dictionary since their school days (*Gray, Rec. vol. II*, fol. 5762, x-Q. 60).

Some of the persons questioned stated that they had used Webster's Dictionary, and had copies of it on their desks, which they wished to refer to in answering questions (*Rec. vol. II, Schultz*, fol. 5563).

Others stated that in their opinion Webster's Dictionary was a good dictionary (*Gray, Rec. vol. II*, fol. 5760, x-Q. 54).

Obviously if these interrogated persons had been

¹*Rec. vol. II*, fols. 5611, 5629, 5751, 5230, 5552.

called as witnesses, and *fully* examined, the list of instances of actual deception would have been multiplied many times over. The negative answers given to the selected questions is in no way inconsistent with a secondary meaning in the name Webster.

(2) *Denial of original and exclusive publication and use is specious and untrue.*

The main defence under this branch of the case consists of a denial that complainant and its predecessors in title were the original "publishers" of Webster's dictionaries, or that they were, at any time, the exclusive "publishers" of such dictionaries, and the truth of Judge Colt's finding that from 1847 to 1889 the Merriams were the exclusive "publishers" of dictionaries under the name of "Webster" was challenged. These contentions of defendant were based solely upon the books, contracts and assignments put in evidence by complainant.

Judge Colt found, in the *Ogilvie* case,¹ and his finding was affirmed by the Circuit Court of Appeals for the First Circuit,² and was followed with approval by the Circuit Court of Appeals for the Sixth Circuit,³ as follows:

"It further appears from the evidence that from 1847 to 1889 the Merriams were the sole publishers of Webster's dictionaries."

Judge Hand, in the opinion below, said:

"The record must have been quite different in that case, for Judge Colt could say that no one but the complainant published any Web-

¹*Merriam v. Ogilvie*, 149 Fed. 858.

²*Merriam v. Ogilvie*, 159 Fed. 638.

³*Merriam v. Saalfeld*, 190 Fed. 197, and on rehearing, 198 Fed. 369.

ster dictionaries between 1847 and 1889, a fact abundantly disproved in the case at bar" (*Rec. vol. III*, p. 2069, fol. 8273).

The learned trial Court was grossly misled into making the above statement, and counsel for appellee will be derelict in their duty to the Court if they allow it to go uncorrected in this Court. As the same counsel appeared for defendants in the two cases, they know that the record on this point was not different, *but was identical*. The evidence in question consisted of (1) the title pages, copyright notices, and inscriptions upon the covers of the Webster dictionaries from 1806 to 1889; (2) various early contracts and assignments, under which complainant claims title, and (3) the copyright certificates of the Webster series of dictionaries. All of this evidence was offered *by complainant* in this case.¹ All of this evidence was offered *by this complainant* in the case before Judge Colt, as appears from the transcript of the record in that case now on file in this court.² The dictionaries produced in this case were the identical books produced in that case. The contracts, assignments, and copyright certificates offered in this case, were in the form of *printed copies actually cut from the record of the case before Judge Colt*. In view of these facts, the lower court's suggestion that the record before Judge Colt must have been "quite different" is untenable.

The facts as to the original and exclusive use of the name Webster to indicate the origin or ownership

¹*Rec. vol. I*, pp. 214, 215. *Exhibits printed, Rec. vol. I*, pp. 671-812.

²Transcript filed April 18, 1908, with petition for writ of *certiorari* in case of *G. & C. Merriam Co. v. Ogilvie*, No. 719, Oct. Term, 1907.

of dictionaries are all shown by documentary evidence, and hence are not open to doubt or dispute. Beginning in 1806, Noah Webster and his estate prepared, published, copyrighted, and continuously owned every "Webster" dictionary until the series was conveyed to G. & C. Merriam, complainant's predecessor, by the early contracts and assignments. From that time until 1889, the Merriams prepared, published, copyrighted and continuously owned every "Webster" dictionary published in this country.¹

The sole function of trade-marks and trade names is to indicate origin or ownership of the goods. From 1806 to 1889, every dictionary bearing the name Webster came from the same source, and had the same ownership. This was always either complainant itself, or one of its predecessors in title, going back without break to Noah Webster.² The name Webster was used *exclusively* in this manner by complainant and its predecessors during all this long period. Defendant is challenged to point out a reference in the record to a single Webster dictionary of this period of a different origin or ownership. There are none such in evidence.

Instead of denying such exclusive origin and ownership of all "Webster" dictionaries (an undeniable fact), defendant, by a mere play upon the word

¹See "Chronological Statement of the Publication of Webster Dictionaries", in Appendix, *post*, pp. 1 *et seq.* The possibility of insignificant and unknown piracies is, of course, not excluded. But there is only the very vaguest testimony of any such, and any such would be immaterial on the question of secondary meaning.

²See *title pages, Copyright notices, and certificates of Webster series, Rec. vol. I*, pp. 671-779. "Early Contracts and Assignments," *Rec. vol. I*, pp. 783-812. And see *Abstract of Testimony*, in Appendix, *post*, pp. 1 *et seq.*

"publisher," asserts that complainant is not the "original publisher" of Webster dictionaries, and not the successor of the original "publisher." This is based solely on the fact that Noah Webster published his first dictionary, that of 1806, by contract with "Hudson & Goodwin, Book-Sellers, and Increase Cooke & Co., Book-Sellers," as appears from the imprint upon the title page.¹

It is absurd, of course, to assert, as defendant does, that Webster never "published" a book, and that he was not the original "publisher" of his own dictionaries, simply because he was not a printer or book-seller. He was the original publisher of his own works in every legal and ordinary sense of the term,² and complainant is his direct successor.

Relying upon a like play upon the word "publisher," defendant asserts that nine concerns "published" Webster dictionaries prior to 1847,³ as shown by the publishers' imprint, upon the title pages of the books published during this period.⁴ But the indisputable fact is that Webster was the author and proprietor of all of these dictionaries and the owner of the

¹See title page, *Rec. vol. I*, p. 671.

²"PUBLISH. . . . 4. To cause to be printed and offered for sale; issue from the press; put in circulation; as, to *publish* a book" etc. "PUBLISHER, one who publishes." *Century Dictionary*.

"PUBLISH. . . . 3. To bring before the public, as for sale or distribution; esp. a To print, or cause to be printed, and to issue from the press, either for sale or general distribution, as a book," etc. "PUBLISHER. One who publishes; esp. one who issues, or causes to be issued, from the press," etc. *Webster's New International Dictionary*.

³Hudson & Goodwin; J. & D. West; S. Converse; N. & J. White; White, Gallaher and White; F. J. Huntington & Co.; Huntington & Savage and J. S. & C. Adams.

⁴See "Title Pages, Cover Inscriptions and Copyright Notices of Webster Series", *Rec. vol. I*, pp. 671-719.

copyrights under which they were published.¹ He remained at all times their sole proprietor and the responsible source of their literary contents. The name designated *his* series. Not one of these "publishers" compiled, copyrighted, or published upon his own account independently a Webster dictionary. All merely printed and sold specific books under contract with Webster as proprietor. Their use of the name Webster upon the books so published was just like that of every retailer of trade-mark goods. In a word, it was a licensed use of the name *upon genuine goods*, procured from the original and sole proprietor. The name during this period indicated origin and ownership in Webster exclusively. He reaped the benefit of the good-will acquired by the name, and it is immaterial how many selling agencies he employed.

Defendant further asserted below that from 1847 to 1889 fifteen other named publishers² continuously published Webster dictionaries under that title *in competition with complainant*, and that consequently the name Webster could not have acquired any secondary meaning indicating only the Merriam publications. Such statement is wholly untrue, and there is nothing in the record to justify it. It was this untrue statement that misled Judge Hand. It is conclusively shown by the record³ that all of these so-called

¹See "*Copyright Certificates of Webster's Series*", *Rec. vol. I*, pp. 721-781.

²Harper & Bros.; White & Sheffield; J. S. & C. Adams; Huntington & Co.; F. J. Huntington; Huntington & Savage; Mason Bros.; J. B. Lippincott Co.; Ivison, Blakeman, Taylor & Co.; Ivison, Finney, Blakeman Co.; American Book Company; J. Duffy's Sons & Co.; Ward, Locke & Co.; World Publishing Co. and Hurst & Co.

³See "*Chronological Statement of the Publication of Webster Dictionaries*," in Appendix, *post*, pp. 1 *et seq.*

"publishers" during this period, except the last four, as to whom there was but the vaguest secondary evidence of any publication,¹ were mere licensees of the Merriams, selling books which the Merriams had compiled, copyrighted and owned, and paying the Merriams a royalty therefor.² Certainly no rights in the name "Webster" were lost or impaired by any such licensed use.³

Thus defendant stated below that the firm of Ivison, Blakeman, Taylor & Co., and its corporate successor, American Book Company, had sold over 3,500,000 copies of Webster's school dictionaries *in competition with complainant*, and this statement may be repeated. It is untrue, and unjustified. The uncontroverted facts are that complainant prepared the literary contents of these books, provided the plates from which they were printed, copyrighted and owned them, and caused them to be printed and sold by the Ivison firm and its successor, the American Book Company, under a contract to account to the complainant

¹These are: *World Publishing Co.*; *J. Duffy's Sons & Co.*; *Ward, Locke & Co.*, and *Hurst & Co.*; See *Abstract of the Testimony* in Appendix, *post*, pp. 21-24.

²See *Abstract of the Testimony* in Appendix, *post*, pp. 8-21.

³A similar contention was rejected by Judge Lacombe in *N. Y. Herald v. Star Co.*, 146 Fed. 204; *aff'd* 146 Fed. 1023, ("Buster Brown" case) where it was said: "It appears that certain other newspapers have used the words as a title for comic sections in their Sunday editions, but in every instance this was with the consent of complainant and upon paying it for the privilege."

In *Shaver v. Heller*, 108 Fed. 821, 824, the Circuit Court of Appeals for the Eighth Circuit made a similar decision, saying: "One does not lose the good will of his trade in an article of his manufacture by placing upon it the names of his customers who are engaged in selling it, nor by the fact that the consumers know only the name and excellence of the article, and neither know nor care who makes it."

and pay it a royalty on every copy sold.¹ Upon no conceivable theory can such licensees, selling complainant's books, be termed independent "competitors".

Defendant further argued that Harper & Bros. and Lippincott & Co. published Webster dictionaries during this entire period. No one from Harper's or Lippincott's was called as a witness to prove this fact. There was no proof whatever of such publication or sale. Defendant simply assumed it because the names of these publishers appeared in the imprint of certain early editions. The book which defendant asserted Harper and Lippincott published during all this time was the "Octavo Abridgment," which was compiled by Webster and assigned to the Merriams in 1858². This book had previously been published successively by Harper, White & Sheffield, and Lippincott under a Webster license, but after the assignment in 1858 it was published only under a Merriam license. The Merriams published and copyrighted a new edition of it in 1860. The other books claimed to have been published by Lippincott were all Merriam books, published and sold under a Merriam license.³

The defendant also asserted that J. S. & C. Adams, whose names appear in the imprint of Webster's Unabridged Dictionary of 1840, continued to publish this book during the period in question, namely, 1847-1889. No copy of it was produced, or testified to. The copyright and unsold remainder of this edition was sold to

¹*Washburn, Rec. vol. I, fols. 532-533; 884-886; McKnight, Rec. vol. II, p. 1427, fol. 5706.*

²*See Lippincott Contract, Rec. vol. I, p. 795. See Exhibits, Webster's Dictionary, "Octavo Abridgment," editions of 1841, and 1860.*

³*See Abstract of the Testimony in Appendix, post, pp. 13-16.*

the Merriams in 1843, and in 1847 the Merriams published and copyrighted in their own names a new edition of it. Moreover, Adams was originally and always a mere licensee of the proprietor, Noah Webster, to whom G. & C. Merriam directly succeeded.¹

Defendant also contended that the several Huntington firms published Webster dictionaries as competitors of the Merriams, notwithstanding the fact that their license contracts appear in the record and were assigned to the Merriams with the consent of the Webster estate in 1854.² There have been, and still are, licensees distributing, under contract with complainant, the complainant's Webster dictionaries, but complainant and its predecessors were the sole proprietors and the grantors of the licenses. Not until after 1889 did any infringing competitive publications come into the market.

As to the remaining four alleged competitive publishers of Webster dictionaries, no copy of their alleged books could be produced, and nothing is known of their nature or contents. The record shows that the dictionaries of two of them, J. Duffy's Sons & Co. and Ward, Locke & Co., were foreign publications, and no appreciable circulation was shown in this country.³ The book of Hurst & Co. did not bear the name "Webster" at all during this period, but that name was added at a later date to make it sell.⁴ The World Publishing Co. was an unknown and insignificant in-

¹*Rec. vol. I*, pp. 783-794. See *Abstract of Testimony*, *post*, p. 7.

²See "Early Contracts and Assignments", *Rec. vol. I*, pp. 783-812.

³See *Abstract of the Testimony*, pp. 21-24, *Rec. vol. III*, fols. 7237, 4772, 4773, 4794-9.

⁴See *Abstract of the Testimony*, *post*, pp. 23, 24. *Rec. vol. I*, pp. 666, 667; *vol. III*, 1817, 1819.

fringer at most and has disappeared from public knowledge.¹

Obviously Judge Colt was right in finding that complainant was the sole "publisher" of Webster dictionaries down to 1889. But whatever construction may be put on the word "publisher," it is indisputable that complainant (with its predecessors) was the sole proprietor and source of such dictionaries, which is the only material fact. The name Webster has always indicated books of that origin and ownership.

(3) *Existence of other infringing dictionaries.*

The existence in the market for a considerable period of other infringing "Webster" dictionaries was urged by the defendant as a reason why the name "Webster" does not primarily indicate complainant's books. A number of this class of dictionaries were offered in evidence by defendant as exhibits. It appears from the evidence on both sides that, with the exception of the large Ogilvie dictionary, which has been twice enjoined, these other so-called Webster dictionaries are either photographic reprints of the obsolete 1847 edition, or are small books of no literary importance or reputation. In fact many of them are the same book masquerading under different names, and of the same fraudulent character as defendant's book.² Many of them have been enjoined in reported

¹See *Abstract of the Testimony*, p. 24. *Rec. vol. II*, p. 1298, fols. 5190-5192; *vol. II*, p. 1393, 5569-5574.

²*Rec. vol. III*, p. 1833, fols. 7331-7346. See also the books themselves offered as Exhibits, and Complainant's corresponding Dictionary Exhibits, showing the origin of these books. See *Notice Offering Dictionary Exhibits Pursuant to Stipulation*, *Rec. vol. I*, p. 664, fols. 2656-2674. For full statement of the evidence on this subject, see *Abstract of Testimony*, *post*, pp. 30-40.

and unreported cases. It was shown that none of these so-called "Webster" dictionaries have attained any reputation, authority, or individuality of their own, and particularly that they are not the books which have the reputation and authority invoked by the term "Webster's Dictionary."¹ No contradiction of this was attempted.

During the entire period of these publications, complainant litigated its rights against various infringements, and invariably obtained relief. If these other publications conformed to the restrictions imposed by the courts, and adequately distinguished, they could not impair, but on the contrary, would emphasize the trade significance of the name Webster. If they did not distinguish, but were mere piracies successfully passing themselves off as the original and genuine "Webster's" dictionary, they also could not impair the trade meaning of that name. Only by establishing a distinctive identity of their own, as a recognized variety of the "Webster's" dictionaries, could they affect the meaning of that term in the public mind.

The evidence in the case at bar overwhelmingly establishes that at the present time it is the complainant's dictionaries and not any of these infringements which are indicated in the public mind by the name "Webster's Dictionary" and which alone have acquired the high repute and marketability which have tempted so many piracies. The evidence already referred to, showing that the name Webster has acquired, and now possesses, a secondary meaning; that it indicates the

¹*Rec. vol. 1: Clarke*, p. 490, fol. 1960; *Funk*, p. 364, fols. 1454-1457; *Putman*, p. 361, fol. 1561; *Wadlin*, p. 467, fols. 1868, 1876; *Van Dyck*, p. 333, fols. 1332-1337; *Draper*, p. 500, fols. 1999-2002; *Martin*, p. 458, fol. 1829; *Mead*, p. 475, fols. 1897-1898.

dictionaries of the Merriams, and that actual deception of purchasers results from an untruthful use of that name in connection with different dictionaries, is conclusive proof that however great or numerous the infringements upon the Merriam's rights in that name may have been, they have not yet been sufficient to deprive that name of its distinctiveness, or to prevent an untruthful use from being deceptive. This is *the test* of the right to relief. So long as the use by others of the name Webster naturally and probably tends to deceive the public, and to lead buyers to accept such other dictionaries as and for the Merriam dictionaries, the Merriams have not lost their right to protection.¹

In the *Ogilvie* case, in the First Circuit, the existence of numerous infringing Webster dictionaries was also before the court, but Judge Colt held, with the approval of the Circuit Court of Appeals, that—

"Notwithstanding this circumstance, it is shown by a preponderance of evidence that the name 'Webster' still indicates to the public the dictionaries published and sold by the Merriam Company." *Ogilvie v. Merriam*, 149 Fed. 858, 860, affirmed 159 Fed. 638.

In the *Saalfield* case, in the Sixth Circuit, the Circuit Court of Appeals, with these infringing dictionaries before it, said:—

"This finding may well rest upon *sufficiently* exclusive use, with public acquiescence, from

¹"One test by which to determine whether a word which was originally a trade-mark has become *publici juris* is whether the use of it by persons other than the original owner, is still calculated to mislead the public, and to induce them to buy goods not made by the original owner, upon the supposition that they are his goods." *Rathjen's Am. Comp. Co. v. Hotzappel Comp. Co.*, (C. C. A.) 101 Fed. 257, 263. See also *Ford v. Foster*, L. R. 7 Ch. 611; *Tellow v. Tappan*, 85 Fed. 774, 775.

1889, when the copyright expired, till 1904 when Ogilvie published." *Merriam v. Saalfeld*, 198 Fed. 369, 375.

That finding is still true. No change of meaning has been shown. Piracy by one person does not authorize piracy by another.¹ Defendant has proved merely the existence of other infringements; but complainant has shown that notwithstanding this fact, the name "Webster" is still distinctive, and still indicates its book, and that defendant's use of it deceives the public.

III.

DEFENDANT'S BOOK IS A REPRINT OF THE "BRITISH EMPIRE DICTIONARY," AN ENGLISH WORK NOT EVEN "BASED" ON ANY EDITION OF WEBSTER'S DICTIONARY; IT IS NOT A GENUINE WEBSTER'S DICTIONARY IN ANY SENSE OF THE TERM.

If defendant's book is in truth a Webster's Dictionary, doubtless it may be called so, with an explanation to prevent deception. But if defendant's book is not a Webster's Dictionary, defendant will not be permitted to misrepresent it, with the purpose and effect of passing it off as and for complainant's Webster dictionaries.

The inquiry here, therefore, is whether or not defendant's book is, as a matter of fact, in any fair and reasonable sense of the term a Webster's Dictionary.

¹*Cocks v. Chandlers*, L. R. 11 Eq. 446, 450. "It is no answer to his complaint against any particular person who has so used it [i. e., labels and dress of goods] to say that such person is not the only one who has done so, for a trespasser cannot justify upon the ground that others have committed like trespasses." *Actiengesellschaft, etc. v. Amberg* (C. C. A.), 109 Fed. 151.

This is purely a question of fact to be determined on the evidence, and involves a determination of the identity of the books known today as Webster's Dictionary. In view of the prior adjudications and the demonstrated "secondary meaning" of the name "Webster," there seems to be no room for doubt.

Burden of proof is on defendant to justify.

The burden of proving facts showing that defendant's book is a Webster's Dictionary, and entitled to bear that name, rests upon the defendant. As this court has said:—

"When the defendant has to justify using the plaintiff's trade-name, *the burden is on him*. Finally as the case presents what is a fraud on its face, it is more likely that the defendant is a modern advertiser than that he has discovered the hidden formula of the plaintiff's success."¹
Jacobs v. Beecham, 221 U. S., 263.

In the *Webster's Dictionary* case against Saalfeld, the Circuit Court of Appeals for the Sixth Circuit, took the same view, saying:

"So it is wrong, in such a case and when this 'secondary meaning' is once established, to start with the premise that defendant is entitled to use the word; *prima facie*, viewed from this point, he is not. The right, for the purpose of such a case, is primarily vested in the complainant." *Merriam Co. v. Saalfeld*, Opinion on Rehearing, July 17, 1912, 198 Fed., 369.

Defendant's answer admits that defendant's book is not a copy or reproduction of any previous genuine

¹See also *Liebig's Extract of Meat Co. v. Liebig's Extract Co.*, (C. C. A.) 180 Fed. 688, 690, where the same rule was declared and applied.

Webster's Dictionary. It pleads as an affirmative defense, however, that its book is "a revision of" the 1847 edition of the book entitled, "An American Dictionary of the English Language by Noah Webster" which, in its day, was known as "Webster's Dictionary," and claims that this alleged fact justifies it in saying that its book is Webster's Dictionary. (*Answer, Rec., vol. II*, pp. 957, 958.) As a matter of law this conclusion is erroneous. The fact alleged is untrue. The *burden of proving this fact is upon defendant.*

Decision below, and comments thereon.

The defendant failed to prove the defense alleged, and the court below so found. The answer alleges:

"Defendant denies that the designating title of said dictionary, 'Webster's New Standard Dictionary,' is false, and alleges the fact to be that said dictionary is a revision of 'Webster's Unabridged Dictionary,' the copyright of which was issued in the year 1847." (*Rec. vol. II*, p. 957.)

The court found:

"The complainant has established beyond any question, in my judgment, that the immediate basis of the Crown Dictionary¹ was the British Empire Dictionary, which has been put in evidence in this case, and which was edited by the Rev. E. D. Price, F. G. S. The proof of this consists in the identity of the literary matter between the two, which is so great as to be substantially identical." (*Rec. vol. III*, p. 2062, fol. 8247. See also "*Red Letter Exhibit*", *Rec. vol. I*, p. 889, et seq.)

¹The answer admits that defendant's book is reprinted from the plates of the Crown Dictionary (*Rec. vol. II*, p. 958).

This disproved the defense alleged and attempted to be proved by defendant. But under a manifest misapprehension of the evidence, and upon a theory of literary descent which was twice expressly repudiated by defendant in taking evidence,¹ and which is inconsistent with the fact pleaded, the trial Court assumed that the "British Empire Dictionary" of Price was the "literary descendant" of the "Imperial Dictionary" of John Ogilvie (1883 edition), the first edition of which was published in 1850, and that the latter edition of the Imperial was "on the basis of Webster's English Dictionary."² Then the Court said:

"Certainly Ogilvie could have called the Imperial Dictionary either 'Ogilvie's Webster' or

¹*Rec. vol. III*, pp. 2018, 2019, where the following occurred on objection to a question put by defendant to its witness Rolfe:

"MR. HALE: Objected to . . . and further, because it is not shown that there is any connection between defendant's book and the English Ogilvie's Imperial Dictionary, but on the contrary, defendant's book is alleged to have been based directly upon Webster's Dictionary, and an attempt has been made to show that fact.

"MR. CARROLL: Defendants are not attempting to prove any origin or basis in the Ogilvie Imperial Dictionary, but are simply attempting to ascertain more correctly what this witness means by 'basis.'"

"Re-d. Q. 142. If, for example, the editor of this book in Webster's Illustrated Dictionary had never seen Webster's 1847, but had compiled his book entirely from Ogilvie's Imperial Dictionary, and the result had been as it is in this book, such a large percentage of material identical with Webster, would you say that it was truthfully derived from or based on Webster's dictionary?

"MR. HALE: Objected to as incompetent, irrelevant and immaterial, as incorrectly assuming facts and as calling for a mere guess or conjecture as to a state of facts which is not even claimed to exist.

"MR. CARROLL: Defendants truly do not claim this state of facts to exist, but are merely attempting to find out precisely what the witness understands by the words 'based on' or 'derived from.'"

²*Opinion below, Rec. vol. III*, pp. 2062-3.

the 'Imperial Webster,' or any other kind of 'Webster' that he wished. The successive editions certainly were Webster dictionaries and so were any smaller works, derived from those editions, whether abridgments, condensations, or the like. Nor does it seem to me to matter that the intermediate sources did not go by the name Webster. Here, for example, is a work which comes down by precisely the same kind of line of descent from Webster that the complainant's present abridgments come, each individual in the line being formed from its predecessor by some accretion, some elimination, some amendment, till one reaches the work of Webster himself. When the public uses 'Webster' does it understand that all the intermediate steps shall have been so named? I hardly think so. Rather, it seems to me, it is the fact of its unbroken descent that the word implies." (*Rec. vol. III*, p. 2064.)

This is the theory and reasoning upon which this case was decided. We respectfully submit that it is radically erroneous for the following, among other reasons:

(1) The fact as to public use and understanding of the name Webster in connection with dictionaries must be found upon the evidence, and may not be simply an expression of the judge's individual opinion, as the above seems to be (*Howe Scale Co. v. Wycoff*, 198 U. S. 118). The opinion above expressed is not only without any evidence to support it, but it is contrary to the uncontradicted testimony of all the witnesses upon both sides.¹

(2) Again, and conceding *arguendo* that John Ogilvie, in 1850, could have called his Imperial Dic-

¹See *ante* Point II, pp. 13 *et seq.*, especially pp. 28-31.

tionary "any kind of Webster that he wished," he did not do so. He made a different book. He gave it a distinctive name. It acquired an identity and authority of its own, under its own name, and was never known or recognized as a Webster's Dictionary. An order in the market for "Webster" dictionaries could not have been filled with it,—it would not have been a good delivery. A contract calling for "Imperial" dictionaries could not have been performed by supplying "Webster's" dictionaries. Revised editions of the "Imperial," and abridgments of such revised editions, stand on its reputation and good will,—not on that of Webster's Dictionary. For more than half a century the two works grew steadily apart, during which period complainant was building up the name and reputation of its revised Webster dictionaries and keeping the work abreast of the times, which developed work alone is now recognized by the public under the name "Webster's." At this late date, it is surely wrong in every sense,—moral, legal and literary, to call an offshoot of the Imperial Dictionary a "Webster's Dictionary." Witnesses on both sides so testified (see *ante*, pp. 28-30). If Ogilvie, in 1850, had called his book Ogilvie's Webster, or any other kind of Webster he wished, two distinct varieties or editions of "Webster" dictionaries might have developed *pari passu*. But he did not do so, and only one Webster's Dictionary was developed,—that of complainant.

(3) Defendant's book is not "a work which comes down by precisely the same kind of line of descent from Webster that complainant's present abridgments come." Every book in complainant's line has borne the name, and been known in its time as Webster's Dictionary. Each is the immediate descendant of a

Webster dictionary. Each came from the same source, and had the same continuity of ownership, as all prior Webster dictionaries. Defendant's book has had no continuity of origin, ownership or name. It has changed name and ownership at every step in the line. No predecessor in the line for over sixty years has borne the name, or been known as Webster. "Unbroken descent" can hardly be claimed for defendant's book. Under the theory of the Court below, it would be fair and lawful for the publishers of the well-known "Century" and "Standard" dictionaries to rip off the covers, to tear out the title pages, to re-title each of those works "Webster's Dictionary," and then to sell them in competition with the established Webster's Dictionary, for both works actually have the precise line of descent incorrectly attributed to defendant's book by the court below as the basis of its decision.

(4) The finding of a basis in the English "Imperial Dictionary" was erroneous, and surprised complainant because: (a) such issue was not litigated; (b) defendant expressly disclaimed and repudiated such proposition, whereby complainant was misled, and did not offer evidence in rebuttal of it; and (c) it is inconsistent with the answer, and the whole course of the proofs. The Court considered that there was "adequate *prima facie* proof" of this fact "in the absence of contradiction." (*Rec. vol. III, p. 2063.*) There was no chance to offer contradiction, under the circumstances.

(5) The Court misapprehended the evidence. There is no such evidence in the record as the Court recites as a basis for this finding.

Evidence as to literary origin of defendant's book.

In its *prima facie* proofs, complainant offered no evidence of the literary origin of defendant's book, the answer having admitted that it was a reprint of the "Crown Dictionary," and the burden of proving that this book was a revision of the 1847 edition of Webster's Dictionary, as alleged in the answer, being upon the defendant.

Defendant attempted to prove its allegation, relying for this purpose solely upon the expert opinion evidence of Professor Peck, formerly of Columbia University.¹ He testified that in his opinion, defendant's book was "Websterian" in character, and contained matter which, in his opinion, had been copied or paraphrased from Webster's Unabridged Dictionary, and that, therefore, it was properly called "Webster's Dictionary."² There was no proof of the actual sources of either the Crown, or British Empire Dictionary. There was merely the opinion of Prof. Peck.

In rebuttal, complainant proved, and the Court found,³ that instead of being revised from the 1847 edition of Webster, as alleged, the actual basis of the Crown Dictionary was, "beyond any question," the British Empire Dictionary, with which it was substantially identical.⁴ In further rebuttal, to meet the argument that Peck's opinion evidence equally showed that the British Empire Dictionary was revised from the 1847 edition of Webster, complainant proved that the

¹*Peck, Rec. vol. III, p. 1534 et seq.*

²*Rec. vol. III, pp. 1545-1555.*

³*Opinion below, Rec. vol. III, p. 2062, fol. 8247.*

⁴*Mawson, Rec. vol. I, pp. 506-540. See also "Red Letter Exhibit," Rec. vol. I, pp. 889 et seq.; also the exhibit copies of said dictionaries.*

alleged similarities between the Crown dictionary and the original Webster of 1847, upon which similarities Professor Peck based his opinion, either did not exist at all, or were greatly exaggerated; that such similarities as did exist were non-significant, being necessitated by the common subject matter and equally found in almost all dictionaries, and that much greater and more significant identity existed between defendant's book and several previous British dictionaries, notably Cassell's Dictionary, Chambers' Dictionary, Johnson's Dictionary and the English Imperial Dictionary of John Ogilvie (1883 edition).¹ It was further shown that the matter alleged to have been copied from Webster might equally well have been copied from any one of several dictionaries.² The sole purpose and effect of this evidence was, not to prove the literary sources of defendant's book (for it was not incumbent on complainant to do so), but to show that Peck's opinion that certain definitions were copied or paraphrased from Webster had no foundation or probative force, because they might equally well have been copied or paraphrased from other sources, or even have been independently produced. When Peck's testimony was so rebutted, defendant's case failed, because the burden of proving revision from Webster was on defendant.

In surrebuttal, defendant reiterated its claim of direct revision from Webster; recalled Peck, who gave additional instances of alleged copying and paraphras-

¹*Mawson, Rec. vol. I*, pp. 540-553. See also *Abstract of Testimony* in Appendix. The English Ogilvie's Imperial Dictionary must not be confused with the Webster's Imperial Dictionary enjoined in the Ogilvie suit in the First Circuit, 159 Fed. 638. They are wholly distinct books.

²"Complainant's Parallel Column Exhibit," and *Mawson, Rec. vol. I*, pp. 540-553.

ing,¹ and called Prof. Rolfe, who testified that in his opinion Peck's exhibits were fairly made, and indicated to him that defendant's author "had Webster before him; Webster was his primary source; that is, he worked from Webster" (*Rec. vol. III*, pp. 2005-6); had the book before him in doing the work, and actually saw it (*Rec. vol. III*, p. 1994).

The opinion below expressly rejects the whole of defendant's evidence as to the literary origin of defendant's dictionary.² It found that defendant's author did not see and use Webster, as claimed, and gave to the book an origin and descent which was expressly denied and repudiated by defendant and opposed to the whole theory of its proofs, and which was different from that alleged in the answer. The actual defense was disproved, and the court so found. The decision was rested on a fact neither alleged in the pleadings nor litigated by the parties.

Two additional grave errors, in respect to the testimony, were made by the court in reaching its conclusions as to the literary descent of defendant's dictionary.

(1) Thus the court said:

"The parties in taking testimony have proceeded upon the assumption that the kinship between dictionaries may be ascertained by ex-

¹*Rec. vol. III*, p. 1914 *et seq.* And see *Abstract of Testimony*, in *Appendix*.

²Judge Hand said: "The first question, therefore, which arises is, whether the dictionary in question was based upon Webster's original work in such sense that it is entitled to be known by that name. In the solution of this question I am not disposed to enter into any nice considerations of a literary character, such, for example, as Professor Peck suggests, as to what creates a Webster's dictionary. For it is quite clear that whatever scholars may think, the public generally—and it is the public with whom we are now concerned—mean something else by the words in question." (*Rec. vol. III*, p. 2061.)

amining the verbal identities in the contents" (*Rec. vol. III*, p. 2062).

Complainant's whole case in rebuttal was a strong negation of such proposition, and the actual position taken by complainant below was thus stated in its briefs:

"In compilations such as directories, dictionaries, digests and the like, mere identity of language does not prove copying, because the necessities of the situation, and the existence of common sources, requires and produces similarities and identities. Something additional, in the nature of common errors, etc., must be shown to support the conclusion of copying. The copy-right cases are in point"¹ (Brief in District Court, p. 92; in C. C. A., p. 61).

Almost the whole of complainant's rebuttal testimony is in direct denial of the assumption attributed to complainant by the court. That is its sole purpose.² For example, complainant's witness Mawson testified:

"As is well known to all men engaged in lexicographical work, there is a certain per-

¹*Callaghan v. Myers*, 128 U. S. 617; *List Pub. Co. v. Keller*, 30 Fed. 772; *West Pub. Co. v. Lawyers' Co-Op. Co.* (C. C. A.), 79 Fed. 756. The brief below further contended: "The small amount of similar or identical words common to defendant's book and the 1847 Webster, is not significant of copying or use. There is a necessary and unescapable amount of similarity and identity between all dictionaries due to the subject-matter. Dictionaries are compilations of facts. All dictionaries purport to correctly define the same words. They must, therefore, state the same meanings, and as the English language must be used to do it, necessarily many identical words and phrases, especially stereotyped forms of expressions will be used, even by independent compilers, in stating the same thing. The brevity of dictionary definitions increases the similarity between them. Use of synonyms is a common thing in dictionaries, and the same synonyms must be used in all, and the number of them is limited for any given word" (p. 92).

²*Mawson*, *Rec. vol. I*, pp. 540-554. See also "Complainant's Parallel Coleman Exhibit in Answer to Peck's Exhibit."

centage of identical expression running through all dictionaries. These similarities may be accounted for, first, as unavailability; second, the use of synonyms; third, coincidence; fourth, common sources" (*Rec. vol. I*, p. 545).

And on cross-examination of defendant's experts, complainant corroborated its own witness by bringing out such statements as: All dictionaries have an inherent similarity. "There is a kind of traditional vocabulary you know;" as the definitions must be expressed in the English language, "similar words will be used."¹ "The identity must be in some significant particular, some significant word rather than a common word."² Common errors, oddities and significant words are evidence of copying.³ "Similarity of language is not a reliable test, or even identity of language as to the source of a book."⁴ "Of necessity they have to be similar because they are supposed to embrace definitions of the English words generally."⁵ Complainant's witness expressly stated the purpose of his comparison of various dictionaries, saying:

"My aim was simply to show that without using Webster's Unabridged Dictionary at all, a most considerable portion of defendant's dictionary could be made up" (*Rec. vol. I*, p. 543).

The court below must have misapprehended the purpose and effect of this line of evidence, for it demonstrates that the kinship between two dictionaries cannot be ascertained by merely "examining the verbal identities between them"; that regard must be had to pos-

¹Peck, *Rec. vol. III*, p. 1662.

²Rolfe, *Rec. vol. III*, p. 1995.

³Rolfe, *Rec. vol. III*, pp. 1996-7.

⁴Rolfe, *Rec. vol. III*, p. 2006.

⁵Sherwood, *Rec. vol. II*, p. 1227.

sible common sources, common errors, peculiarities and the like, and to consecutive and continuous identity of language, such as proved defendant's copying of the British Empire Dictionary.¹

(2) Again, the opinion below says:

"The closest in content to the British Empire Dictionary is Ogilvie's Imperial Dictionary of 1883. The similarity of contents extends to 70% of literal identity; that is to say, 70% of the contents of the British Empire Dictionary appears verbatim in the Imperial" (*Rec. vol. III*, pp. 2062-3).

The court accordingly found that defendant's book was the literary descendant of the Imperial. This was expressly and solely based on the testimony of complainant's witness Mawson, which does not support the above finding. The record shows that defendant's expert Peck had marked exhibit copies of defendant's book and Webster's Dictionary purporting to show identities and similarities between them, and upon which he based his opinion that Webster had been used and copied by defendant's author.² Peck marked in his exhibits, as evidence of such use, what he termed "paraphrases," many of which were grossly unfair, and manifestly absurd.³ To show the true fact, complainant prepared a "Parallel Column Exhibit in answer to Peck's Exhibit," in which these same pages, and corresponding portions of numerous other standard dictionaries are compared, and marked for ease of verification.⁴ In this exhibit

¹See *Mawson, Rec. vol. I*, pp. 505-540.

²*Peck, vol. III*, p. 1556 *et seq.* Also "Defendant's Exhibit C, Peck's Identities."

³See cross-examination of *Peck, Rec. vol. III*, pp. 1618 *et seq.* Also see *Abstract of Testimony, in Appendix, post.*

⁴See explanation of this exhibit, *Mawson, Rec. vol. I*, pp. 542-553.

every word common to defendant's book and the various standard dictionaries compared is underscored in ink, even common and widely scattered words. Actual count of such words shows that the proportion of words in defendant's book identical with words in the specified dictionaries is respectively as follows:¹

With British Empire Dictionary.....	98%
With Cassell's and Imperial combined.....	76½%
With Imperial Dictionary (1883 edition)....	70%
With Cassell's Dictionary.....	61%
With Chambers' Dictionary.....	49%
With Johnson's Dictionary.....	49%
With Annandale's Concise Dictionary.....	46%
With Webster's Unabridged Dictionary (1847 edition).....	45%
With Worcester's Dictionary.....	44%
With Stormonth's Dictionary.....	39%
With Nuttall's Dictionary.....	39%
With Student's Standard Dictionary.....	32%
With Concise Oxford Dictionary.....	28%

This table is accurate, and was accepted and acted upon by the court below. It completely destroyed Peck's opinion testimony that defendant's book was revised from Webster because some similarity and some identity exists between their respective definitions of the same words. With equal or greater probability, it might be said to be based on almost any one of the above dictionaries.² It is apparently an independent compilation,

¹Rec. vol. I, pp. 544; 549.

²Mr. Mawson testified: "This 45% in Webster's is really more than the exhibit actually warrants. I mean that the terms in Webster's are so much scattered, and as a rule are not connected, whereas in other dictionaries, but most particularly in Cassell's the language is closer and with fewer gaps. Moreover, this 45% of identical words which are common to both Web-

with as much originality as most mere compilations of facts may have.¹

The court below while finding against defendant's contention of revision from Webster, held that this table showed that defendant's book was taken from the Imperial Dictionary because of the 70 per cent. of identity between them.² This was erroneous because it disregards the other facts shown by the same table. At the utmost, the table shows only fifteen and one-half ($15\frac{1}{2}\%$) per cent. taken from the Imperial, even upon the assumption that every word in defendant's dictionary common to any other dictionary was copied from some source. Thus the table shows that 61 per cent. of these words could have been taken from Cassell's alone; and that when the Imperial is added to Cassell's, the percentage of defendant's words found in the two combined is increased only by fifteen and one-half ($15\frac{1}{2}\%$) per cent., *i. e.*, to $76\frac{1}{2}\%$. What proof is there that more was taken? Of course, it *may* have been the other way

ster's Unabridged and defendant's dictionary does not mean that outside the other dictionaries I found 45% of matter which could be found in Webster's, but the whole of the matter referred to which is included in that 45% could be found in the other dictionaries specified" (*Rec. vol. I*, p. 544, fols. 2174, 2175).

"In some instances, to make up the sense, they were found a line or two apart. It would have been possible to have taken a copy of the *New York Sun* and marked up some of the columns and say these are the words which have been found, so wide apart and so different from the Webster's Dictionary were the words in defendant's dictionary" (*Rec. vol. I*, p. 545).

¹Mr. Mawson testified: "After making a comparison of the defendant's dictionary with numerous English dictionaries, I came to the conclusion that the defendant's dictionary, or rather the Price's dictionary [*i. e.*, British Empire Dictionary] on which it is based, is an independent production derived from various British sources, certainly not derived in any sense of the word from Webster's" (*Rec. vol. I*, p. 541, fol. 2162).

²*Opinion below, Rec. vol. III*, p. 2063.

about,—70 per cent. from Imperial and 16½ per cent. from Cassell's, or this 76½% may have been divided between these two books in any other proportion. The burden of proof is on defendant, and there is no proof,—not even the basis for a guess. *Non constat* that a single word was taken from the Imperial for the whole 70% of words common to that work might have been made up from some or all of the other dictionaries named in the list. There are, however, indications that Cassell's Dictionary was heavily used by defendant's author.¹ Seventy per cent. of *unexplained* identity between two books strongly suggests copying,—but not where it is shown that almost all of it could equally well have been taken from some other book and there are indications that such other book was used. But at the very most, the table relied on by the court to support its finding shows not more than 15½ per cent. of identity with the Imperial, not explainable by this same table as due to use of other books, and concededly from 28 per cent. to 40 per cent. of common identity between dictionaries is not significant of any copying or use (*Opinion below, Rec. vol. III, p. 2063*). It is unfair to select a single item in the table, and disregard what the table shows as a whole. Moreover, the identities between the Imperial and defendant's book, such as they are, have not been examined to see whether they can be explained as due to use of a common source, or the use of synonyms, stock phrases and the like, or necessary coincidence,—none of which would be any indication of copying or use. Johnson's Dictionary seems to have been a common source for all subsequent dictionary makers, including Webster, and this explains much of the similarity between

¹See *Appendix, Subdiv. III.*

them.¹ The burden is on defendant throughout, and valuable property rights should not be sacrificed upon such uncertain speculations. No evidence was offered either to show use of the Imperial or to rebut such use, for neither party claimed it. It was error to thus rest the decision upon a matter not in issue, and not supported by any evidence.

If this matter is to be decided upon probabilities without proof, the probabilities are against the fact that the British Empire Dictionary was copied to the extent of 70% of its contents from the Imperial Dictionary of 1883. This would have infringed the British copyright, and a violation of law will not be presumed. Moreover, the British Empire Dictionary was issued by reputable publishers; it purports to be an original compilation by the Rev. E. D. Price, and there is nowhere any claim that it was based upon Ogilvie's Imperial Dictionary. The court below ruled that the title page of a dictionary is *prima facie* evidence of its literary source.

In view of the trial court's finding against the literary descent claimed by defendant, and its express rejection of defendant's evidence upon this issue, it is unnecessary to discuss that evidence here in detail, and it is relegated to the appendix.² The nature of that evidence, and of the answer to it has been indicated.

The markings in "Defendant's Exhibit C" and in the exhibits marked by Prof. Peck are utterly unfair and unreliable. No such identities or similarities exist as these markings purport to indicate. This was demonstrated upon Peck's cross-examination,³ and actual in-

¹Mawson, *Rec. vol. I*, p. 550; Peck, *Rec. vol. III*, p. 1980. "Parallel Column Exhibit," p. 32.

²Evidence of literary origin of defendant's book, see *Appendix, post*, Subd. III.

³Peck, *Rec. vol. II*, pp. 1616-1659.

spection and comparison of the books render the point indisputable.¹ Defendant's calculation of percentages of identity and similarity based upon these markings is worthless because made on a false and misleading basis.² In calculating the Webster percentage, the witnesses used a different and smaller denominator than they used in calculating the percentages of identity with other dictionaries, thus making the Webster percentage larger and the other percentages smaller.³ Such percentages so calculated cannot be compared with each other.

In defending the inconsistencies and variations between defendant's dictionary and the Webster's Dictionary on which it is alleged to be based, Professor Peck made some striking admissions. For example, in attempted explanation of the list of words where defendant's dictionary followed the usual English form of spelling as contained in the British Empire Dictionary, and not Webster's spelling, though the latter is now the preferred and usual American form,⁴ Prof. Peck testified that in most cases, defendant's form of spelling was the preferred, or *only form* in "*Worcester's Dictionary*"; and in some cases, that defendant's form was "allowed" or even "preferred" by the Standard or Century dictionaries.⁵ But *this proved complainant's case*, for it showed that defendant's book did not conform to what is expected in a Webster Dictionary. Worces-

¹For convenience of comparison, a number of definitions marked by Peck as coming from Webster are printed in juxtaposition in *Appendix*, Subdiv. III. "Complainant's Parallel Column Exhibit in Answer to Peck's Exhibit" also demonstrates the worthlessness of Peck's opinion evidence.

²See *Abstract of Testimony*, in *Appendix*, Subdiv. III.

³*Watrous, Rec. vol. III*, pp. 2034-2038; *Peck, Rec. vol. III*, pp. 1962-1968.

⁴*Rec. vol. I*, pp. 525-9.

⁵*Rec. vol. III*, pp. 1922-1937.

ter and Webster represent two recognized and different schools, especially and irreconcilably different in the matter of spelling. Peck admits this, and it is a matter of general knowledge.¹ When a purchaser wants a Webster's Dictionary, with Webster spellings, he should not have passed off on him a book with different and "Worcester" (*i. e.*, English) spelling.

Peck also severely criticised Webster's Dictionary of 1847. He pointed out many things which he termed blunders or mistakes. He disagreed with Webster's rules for spelling, upon which Webster was particularly insistent, such as the use of double "l" in words like "dullness," "skillful," etc., and "er" instead of "re" in words like "center," etc. He said defendant's spelling was right, and that Webster's was wrong. He declared that defendant's book was *more "Websterian" than Webster himself*.² Speaking of Webster's Dictionary of 1847 he testified:

"Now, today, I would not have it, or use it, or think of using it; it is very archaic" (x-Q. 90, *Rec.*, p. 1968). "The more I study it, the less I think of it. . . . He was tainted by Johnson" (x-Q. 160, *Rec.*, p. 1980).

Why then, in view of all this, should it be presumed or guessed that the English author of defendant's book, writing in 1899, used this much criticised text, as the basis of the British Empire Dictionary?

Peck also gives a long list of alleged errors or mistakes in Webster.³ If all, or any, of these errors were common to the two books, it would be strong evidence of copying from Webster. *But not one of these errors*

¹*Peck, Rec. vol. III*, pp. 1970, 1972, 1974, 1986, 1987, 1988, 1572-1575.

²*Peck, Rec. vol. III*, pp. 1940-1949, 1959, 1975.

³*Peck, Rec. vol. III*, pp. 1940, 1949, 1959, Qs. 20, 41.

was followed by defendant, which is at least some evidence that Webster was not the basis of defendant's book. Peck further testified that he did not know who compiled defendant's book.¹ And the defendant itself does not know.² Without any knowledge or information as to the source, origin, or authorship of its book, defendant applied the name "Webster" to a British book, which itself did not even purport to be based on Webster, and issued the extravagant and misleading advertisements hereafter mentioned.³

An examination of the words and definitions marked by Professor Peck and asserted to have been obviously taken from Webster shows that it is far more likely that they were taken from some one or more of these other British dictionaries, because they follow peculiarities and variations contained in such dictionaries and not in Webster.⁴ This is a strong indication that they and not Webster were used, for why should changes be made without reason?

Defendant's claim, made below, that out of 30,000 words defined in defendant's dictionary, "about 16,550 are defined identically as Webster defined them" is absolutely unfounded, and there is no evidence in the record to that effect. In truth, there is no evidence whatever that Webster's Dictionary was used in compiling the defendant's book. Mr. Roe, the author of the "Crown Dictionary", stated to one of the witnesses that he compiled it from the "British Empire Dictionary"

¹*Peck, Rec. vol. III, p. 1977, x-Q. 138.*

²*Wright, Rec. vol. II, p. 1095, fol. 4377.*

³*See infra, Point IV, post, p. 89 et seq.*

⁴*See Abstract of Testimony*, where the definitions are brought together for ease of comparison. See also "Complainant's Parallel Column Exhibit in Answer to Peck's Exhibit."

without consulting or using any edition of "Webster's Dictionary".¹

It is submitted, that there is not even a scintilla of evidence that defendant's book was based either upon Webster's Dictionary, or upon the Imperial Dictionary. The burden was on defendant, and there was a complete failure of proof.

What Is a Genuine "Webster's Dictionary"?

Witnesses have testified that in buying defendant's book they wanted and expected to get "a genuine Webster's Dictionary." What is a "genuine Webster's Dictionary"? Genuineness is a question of identity. It is a question of fact, not of law. The thing really intended and designated by a name is the genuine thing of that name. "Genuine" means "not false, fictitious, simulated, spurious, counterfeit."² In this sense, the complainant's books and no others are the genuine "Webster's" dictionaries. It has been repeatedly held in litigated cases that complainant's books are the ones known and intended by the name "Webster's."³

As Judge Denison puts it, that is the "*primary*" meaning of the term (198 Fed. 369). This then is the definition of a genuine Webster's Dictionary. And

¹*Taber, Rec. vol. I, pp. 611, 612.*

²Per Woodruff, J., in *Baldwin v. Van Dusen*, 37 N. Y. 487, 492. "Actually belonging to, or proceeding from the reputed source, origin, or author; having the origin or character which it appears or is claimed to have; authentic; not counterfeit, spurious, false or adulterated," etc. *Webster's New International Dictionary*.

³*Merriam v. Ogilvie*, 149 Fed. 858, aff'd. (C. C. A.) 159 Fed. 638; *Merriam v. Saalfeld* (C. C. A.), 190 Fed. 927, 198 Fed. 369, where the Court said: "The term 'Webster's Dictionary' had in the minds of the dictionary public the meaning that the book so named or marked was the Merriam book."

this is the public understanding, as shown by the testimony of ordinary and average purchasers, as well as of scholars and educators.¹ "It is a question of evidence in each case whether there is false representation or not." *Howe Scale Co. v. Wycoff, Seamans & Benedict*, 198 U. S. 118.

Some of the definitions of a genuine Webster's Dictionary given by the witnesses are reproduced in the margin.²

The obsolete editions upon which the copyright has

¹See Point II, *ante*, pp. 13 *et seq*; *Abstract of Testimony*, Appendix, *post*, p.

²A dictionary published by the original publishers, their agents, or authorized successors. *Rec. vol. I*:—*Foley*, fols. 1126-1128; *Burlingham*, fols. 1274-1277; *Hughes*, fols. 1296, 1297; *McMahon*, fol. 1230; *Cooper*, fol. 467.

"I would consider the only genuine Webster a publication by the publishers who were so long known as the publishers of the Webster's Dictionary,—as the only genuine Webster's Dictionary, whether the copyright had expired or not." *Seybel, Rec. vol. I*, fol. 1015.

"A dictionary published by the Merriam Company, known as Webster's Dictionary". *Seybel, Rec. vol. I*, fol. 1003.

"If he wanted a genuine Webster's Dictionary what would you show him? A Webster's International" (*i. e.*, Merriam's). *McKnight, Rec. vol. II*, fol. 5703.

A book though in fact based on the work of Noah Webster, but published at the present time by some other house than Merriam, "I would not consider genuine." *Cowles, Rec.*, fols. 415-419.

"I wanted something that was a real Webster,—not anything based on it. Any book might be based on anything and still be entirely different." *Fisher, Rec. vol. I*, fols. 1749-1756.

The standard or test of genuineness is whether it is the book generally used in the schools, the one considered as authority in Universities, Colleges and by Courts, judges and literary people. *Buddecke, Rec. vol. I*, fols. 1054, 1055; 1073, 1074; *Gifford, Rec. vol. I*, fols. 972, 973.

One "with the name Webster and what Webster's Dictionary contains,—the contents" *Smack, Rec. vol. I*, fol. 1437.

expired are, of course, "*historically genuine*," but they are not modern genuine Webster's dictionaries.¹

An order today for a Webster's Dictionary would not be properly filled by one of these ancient books. All agree that the average purchaser expects and desires to receive the up-to-date edition of the book named. The obsolete books are properly described as "Webster's Dictionary" only when accompanied with a specification of the edition intended; otherwise the current editions are implied.

There is an obvious distinction between reprints of dictionaries, encyclopædias, and other reference books, which are continually changing through successive editions, though the name remains, and reprints of literary works like Emerson's *Essays*, or Dickens' novels.²

A purchaser of a reprint of Emerson's *Essays*, by whomever "published," obtains a genuine copy of the identical literary composition he intended to buy. Such works are not subject to change, and the name means the same thing after expiration of copyright as it did before. It identifies the same composition. But a present day purchaser of a Webster's Dictionary expects to obtain what Webster's Dictionary has become, not what it was sixty years ago. The name now designates a very different book. For example, because the copyright upon the *World's Almanac* of 1880 has expired, would an almanac for 1915, published by the *New York Journal*, be a "genuine *World's Almanac*"? Would it be any more so, if a few facts were taken

¹*Rec. vol. I*.—*Mead*, fol. 1916; *Funk*, fol. 1463; *McKnight*, fols. 5687; 5703; *Gifford*, fol. 982; *Putnam*, fols. 1575-1584.

²*Putnam, Rec. vol. I*, fols. 1586, 1587; *Mead, Rec. vol. I*, fols. 1905, 1906, 1919-1921; *Haymaker, Rec. vol. I*, fols. 1477, 1478.

from the expired book? Of course the latest edition by the original proprietors of that work is today the only genuine "World's Almanac," and not even the obsolete 1880 edition is now designated by that name, *except historically, and in connection with a descriptive date.*

Accordingly it is plain, both from the evidence, and from the inherent necessities of the situation, that a genuine "Webster's" dictionary to-day means the current representatives of the established series, issued under that name by the same interests as have always been the responsible proprietors of it. To the better educated portions of the community, it may mean the Merriam's compilation with Noah Webster at the original source, as the Court below suggested.¹ But to the ordinary and average purchaser of small dictionaries, including school children, it is doubtful whether the name has such a specific meaning. They know little or nothing of Noah Webster, or his literary work. Many think it was Daniel Webster who wrote the dictionary.² They simply know that there are current "Webster's" dictionaries of high reputation, and to such persons a genuine "Webster's" dictionary is one belonging to that series and issued by the same proprietors.

Defendant's book is not a genuine "Webster's" dictionary in any sense of the term. (1) If defendant's name, or that of its author were Webster, its dictionary would be a "Webster's" dictionary, although not *the* Webster's Dictionary. But such is not the fact. (2) If defendant's book were a reproduction of any

¹*Opinion below, Rec. vol. III, p. 2060.*

²See for example, *Rec. vol. II*, pp. 1456, 1462, 1488, 1493, 1504, 1505.

previous genuine "Webster's" dictionary, copyrighted or not, it would be a genuine "Webster's" dictionary of that edition. But such is not the fact. (3) If defendant's book were an "honest compilation or abridgment at the present time of Webster's work" (see opinion, *Rec. vol. III*, p. 2059), it would be "entitled to describe itself as such" (*ibid.*). Complainant never even remotely contended otherwise. But such is not the fact.

Under any of the above conditions, all that complainant claims, or could claim, is that defendant must take pains to prevent, and do nothing needlessly to increase, the confusion of its book with those of complainant.

But none of these conditions exist, and defendant has no justification for calling its book "Webster's." The words "Webster's Dictionary" are a false representation as applied to defendant's book. It is false in every sense of the term:—(a) False, because defendant's book is really the "British Empire Dictionary" in disguise. (b) False, because Webster is not the author or proprietor of defendant's book. (c) False, because defendant's book is not the book now universally known as Webster's Dictionary. (d) False, because defendant's book is not even a book formerly, at any time, known as Webster's Dictionary. (e) False, because defendant's book is not even an abridgment or revision of any edition of Webster's Dictionary, but on the contrary, is a servile and slovenly copy of an English dictionary, widely variant in spelling, definitions, accuracy and scholarship from any and all genuine Webster dictionaries. (f) False, because defendant's book does not come from the same source as the previous well-known "Webster" dictionaries, as

is now indicated by the acquired secondary meaning and trade significance of the name. It is a simulated spurious and counterfeit,—not a “genuine” Webster’s Dictionary.

IV.

DEFENDANT HAS FRAUDULENTLY MISUSED THE NAME “WEBSTER’S” ON ITS BOOKS AND IN ITS ADVERTISEMENTS. AN INJUNCTION SHOULD HAVE BEEN GRANTED.

Facts showing actual and intended fraud.

The principal facts establishing unfair and intentionally dishonest competition are briefly stated here.

In the month of January, 1908, the *Ogilvie* case was decided in the First Circuit¹ holding that the Merriams had no exclusive right to the name “Webster” in connection with dictionaries, but the dictionary in that case was indisputably based on the edition of 1847, the copyright of which had expired in 1889. This decision was known to both of the defendants in the present cases,² who construed it as authorizing every one to make an unrestricted use of the name “Webster”.³ Thereupon Mr. Wright, the president of the Syndicate Publishing Company, whose business was that of “makers and promoters of premium specialties”.⁴ conceived the idea of publishing and selling a dictionary under the name of Webster’s Dictionary. Accordingly, in July, 1908, he bought the plates of the

¹*Merriam v. Ogilvie*, 159 Fed. 638.

²*Wright, Rec. vol. II*, fols. 4343-4346; *Leon, Rec. vol. II*, fols. 4963, 4964.

³*Wright, Rec. vol. II*, fol. 4466; *Leon*, fol. 4964.

⁴*Rec. vol. II*, p. 1190.

"Crown Dictionary" from a Mr. Klopsch with the predetermined intention of changing the name of the book from "Crown" to "Webster's Dictionary".¹ He conceded in his testimony that he regarded the copyright of the text of the "Crown" dictionary as of no value whatever,² and that he knew that duplicate plates and equal publishing rights had already been sold to the Cupples & Leon Co. He further testified that he had no knowledge as to the source or origin of the literary matter of this dictionary, and did not know whether or not it was in fact based upon any former Webster's Dictionary; that he did not consult its putative author Edward T. Roe, or make any other investigation, and that all he knew about the book was what appeared upon its title page.³ This title page simply stated, in a subordinate descriptive way, that the book was "based upon the unabridged dictionary of Noah Webster, LL.D., and revised and brought up to date in accordance with the most recent eminent English and American authorities by Edward T. Roe, LL.B."⁴ Defendant forthwith changed the title from "Crown Dictionary" to "Webster's New Illustrated Dictionary" and later to "Webster's New Standard Dictionary", suppressed the name of Roe as author and substituted Webster's name, removed the original copyright notice, by which the book could have been identified, substituted a new notice with a current date, and proceeded to print and sell, under the new title page, from

¹Wright, *Rec.* vol. II, fol. 4384.

²Wright, *Rec.* vol. II, fol. 4321.

³Wright, *Rec.* vol. II, fols. 4377, 4382.

⁴See Exhibit, Crown Dictionary, and see title page printed on insert facing p. 90 of this brief.

THE
BRITISH EMPIRE
DICTIONARY
OF THE
ENGLISH LANGUAGE

*TO WHICH ARE ADDED SELECTED LISTS OF PROPER
NAMES, WITH PHONETIC PRONUNCIATION, AND
ABBREVIATIONS IN COMMON USE,
WITH THEIR MEANINGS.*

EDITED BY
REV. E. D. PRICE, F.G.S.



LONDON:
GEORGE NEWNES, LIMITED,
SOUTHAMPTON STREET, STRAND.

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BRITISH
EMPIRE
DICTIONARY

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THE
BRITISH EMPIRE
DICTIONARY
OF THE
ENGLISH LANGUAGE

(The Copyright Notice.)

(Back Title.)

THE
DICTIONARY
OF THE
ENGLISH
LANGUAGE
AND
TREASURY
OF FACTS

THE EDITOR

WHEN IN DOUBT CONSULT THE "CROWN"

*Exhibit a
H. B. Brown*



CROWN DICTIONARY

OF THE
ENGLISH LANGUAGE

Based upon the Unabridged Dictionary of Noah Webster, LL.D.,
and Revised and Brought Up to Date in Accordance with the
Most Recent Eminent English and American Authorities

BY
EDWARD T. ROE, LL.B.

With Appendix containing Synonyms and Antonyms, Foreign Phrases, Language
of Flowers, Coins, Weights and Measures, Differences in Time, etc., etc.



THE CHRISTIAN HERALD
LOUIS KLOPSCH, Proprietor
NEW YORK

[Copyright 1904 by Louis Klopsch, New York.]

WEBSTER'S ^{NEW} STANDARD DICTIONARY

ILLUSTRATED

Based Upon the Unabridged Dictionary of the
English Language

OF
NOAH WEBSTER, LL.D.

Revised and brought up to date in accordance with the most
recent eminent English and American authorities

Containing
THE 1910 CENSUS
with Maps

NEW YORK
SYNDICATE PUBLISHING COMPANY
1911

(Back Title.)

WEBSTER'S
NEW STANDARD
DICTIONARY
ILLUSTRATED

(Front Cover.)

WEBSTER'S
NEW STANDARD
DICTIONARY
ILLUSTRATED

WITH NEW U. S. CENSUS
[Copyright 1911 by Frank E. Wright.]

the Crown plates what defendant announced as the new and latest edition of "Webster's Dictionary".¹ Roe previously had copied this book from the still older British Empire Dictionary, as found below, and changed its name to Crown. Fac similes of the three successive title pages and cover inscriptions of this book are inserted opposite hereto, in which the fraud may be traced, through Roe's "quip modest" in the Crown, to defendant's "seventh degree"—the fraud direct, in "Webster's New Standard Dictionary."

This unnecessary change of name from "Crown" to "Webster's" is a recognized badge of fraud (38 Cyc. 794, 795 and cases cited). The only reason for the change obviously was to get the benefit of the popularity of complainant's dictionaries, for if it had been desired to sell the book solely upon its own merits, the names Crown and Roe would have served as well as any other. But by changing the name to Webster's New Standard Dictionary, defendant would find a market ready made. Leon testified that his company changed the name to Webster's because several of his large retail customers requested it,² to help the sale, a circumstance deemed almost conclusive evidence of fraudulent intent in the *Camel's Hair Belting* case.³ The defendant's officers simply say that they changed the name to Webster's because they had a legal right to do so.⁴ "We knew the word Webster was public property . . . without restrictions."⁵ The president of the defendant,

¹See exhibit books, advertising exhibits, and *Wright's* testimony, *Rec. vol. II*, p. 1100, fols. 4397-8; 4417-4421.

²*Leon, Rec. vol. II*, p. 1257, fols. 5026, 5027.

³*Reddaway v. Banham* [1896] App. Cas. 199.

⁴*Swift, Rec. vol. II*, fols. 4577, 4582. *Wright, Rec. vol. II*, fol. 4256.

⁵*Wright, Rec. vol. II*, fol. 4466.

Wright, also testified that his reason for omitting from the title page the name of Edward T. Roe as author, and the copyright notices by Louis Klopsch dated 1904, was to differentiate his book from Cuples & Leon Co.'s edition of the same book. He did not pretend that the books differed in any substantial respect. The honest method of differentiating, of course, was to continue the name Crown Dictionary, and the confusion was caused solely by the unnecessary change of title to Webster.

From the very beginning, defendant's announcements and advertisements of its dictionary have been false and misleading. The claim of newness, thorough revision, etc., is wholly unjustified as the court below found.¹ For example, in a circular purporting to describe its book defendant says, *inter alia*:

"Description of
WEBSTER'S

New Illustrated Dictionary.

"This most convenient and latest of all Dictionaries", etc. . . . "Its recent publication and careful revision enables it to define and treat a large number of words of recent coinage that cannot be found in any other dictionary", etc., . . . thus the evidences of painstaking revision are found on every hand".²

Yet it had to be confessed that this dictionary was printed from the plates of the "Crown" Dictionary,³ which was a mere reprint of the still older British

¹*Rec. vol. III*, fols. 8277-8.

²"Complainant's Exhibit, Defendant's Advertisements," p. 122, *Rec. fol.* 4501.

³*Answer, Rec. vol. II*, 958, 1092; *Wright, Rec. vol. II*, pp. 1089, 1127.

Empire Dictionary. The testimony of President Wright shows that there was no real revision, and that defendant had no editorial staff. Nothing is charged for editorial work in defendant's books of account.¹ The claim that Professor Peck did any revising is denied by Peck himself.² The undisputed evidence is that in the transmutation of the Crown Dictionary into a Webster's Dictionary the total word changes consisted in the addition of seventy-five (75) words, and the substitution of one hundred and twenty-five words in lieu of words omitted in order to make room for the substitution.³ This was the actual extent of the careful painstaking revision claimed by defendant. It was made by punching holes in the original Crown plates and plugging in "flash" terms of recent currency in order to give color for the claim: "latest of all dictionaries".⁴ This claim of "recent and careful revision" when applied to a "Webster" dictionary clearly implies that it is a revision of the "Webster" dictionaries previously in the market, *i. e.*, that it is a revision of complainant's established work.

In February, 1911, defendant began a newspaper coupon plan of distribution and sale of its dictionary. This plan first originated with a licensee of complainant who used it in connection with the sale of complainant's Webster's Condensed Dictionary. Defendant *began by imitating the plan, and by actually copying the advertisements* of complainant's book.⁵ Defendant's

¹Wright, *Rec. vol. II*, pp. 1090, 1106, 1097.

²Peck, *Rec.*, pp. 1563-4.

³Baker, *Rec. vol. I*, p. 124, fols. 495, 496.

⁴Baker, *Rec. vol. I*, p. 127. Wright, *Rec. vol. II*, pp.

⁵Murphy, *Rec. vol. I*, fols. 2465-2488; Britton, *Rec. vol. I*, fols. 2367-2375; Washburn, *Rec. vol. I*, fols. 2537-2608.

advertisements in the *Pittsburgh Post* of February 12, 1911, *Peoria Star* of November 4, 1911, the *Los Angeles Times* of December 3, 1911, and the *Mobile Item* of December 19, 1911, are almost fac-simile copies of the full page advertisement of complainant's Webster's Condensed Dictionary which appeared in the *Boston American* of September 12, 1910.¹ The striking figure of "Uncle Sam" holding complainant's Webster's Condensed Dictionary is exactly copied with defendant's Webster's New Illustrated Dictionary substituted. The language and display is almost all copied, and applied to defendant's book, and a part of it is here reproduced for comparison:—

**Advertisement of
complainant's Webster.**

**"HERE IS YOUR PROTECTION
"AT HOME OR ABROAD.**

"The result of good fortune is the knowledge of good English. At home or abroad one should have this knowledge. Go where you will, into the depth of ignorance or the height of education, and you will find yourself in need, at all times, of that one great fortune, and that is—a handy reference guide of the correct English language. Confusion of mind to quick answer is the cause of a great deal of embarrassment amongst all classes of people.

"There is only one enlightenment to the correct and true path of knowledge, and that is through the WEBSTER'S CONDENSED DICTIONARY—a book that no family, student or business man can afford to be without. THE BOSTON AMERICAN offers to help you along this path, if you will but read what follows."—*Boston American*, Sept. 12, 1910.

**Advertisement of
defendant's Webster**

**PROTECTION
AT HOME OR ABROAD.**

"The result of good fortune is the knowledge of good English. AT HOME OR ABROAD one should have this protection and knowledge. Go where you will, in the depth of ignorance or the height of education and you will find yourself in need, at all times, of that one great fortune, and that is—a handy reference guide of the correct English language. Confusion of mind to quick answer is the cause of a great deal of embarrassment amongst all classes of people.

"There is only one enlightenment to the correct and true path of knowledge, and that is through the WEBSTER'S NEW ILLUSTRATED DICTIONARY—a book that no family, student or business man can afford to be without. The *Pittsburgh Post* offers to help you along this path, if you will but read what follows."—*Pittsburgh Post*, Feb. 12, 1911.

¹See Scrap-book Exhibit, Defendant's Advertisements, pp. 63, 111, 110, 107, 101.

Several of defendant's advertisements contain the following:—

Caution

When a Dictionary is offered you which is any way similar to this one, observe the exact wording shown herewith.

You want the latest. Do not be deceived. This IS the latest.

WEBSTER'S
New Illustrated
DICTIONARY
 With U. S. Census and Maps¹

The following from the *Waterbury Republican* of August 31, 1911, is a specimen of a form of advertisement largely used,² and which defendant in its brief below said was "of invaluable assistance in the sale of dictionaries":—

¹From Warren *Evening Mirror*, Feb. 27, 1912. Exhibit, Additional Advertisements, p. 6. A similar "caution" against deception appeared in other papers. See Exhibit, Additional Advertisements of Defendant's Book, pp. 4, 9.

²"The newspaper notices were largely in the form of news articles," *Wright, Rec. vol. II*, fol. 4391.

DICTIONARY HAS ITS IMITATORS

**Only Way to Secure Wonderful
Book, Which Contains Lat-
est Information.**

COUNTERFEITS COSTLY

**Coupon Explains Means by
Which the Genuine Article
Can be Secured.**

There are very few of us who realize the dangers lurking in substitutes and counterfeits. We have a Federal law that protects us from the dangers of impure foods. The Government is ever vigilant in guarding us against spurious coins and currency. But we are left to our own resources in the matter of choosing our apparel, our literature and our means of learning, and many times are we deceived by having foisted upon us something of this character that is detrimental to our physical growth and development.

The only protection we have is to guard against substitutes and imitations. It stands us in hand to beware of counterfeits of any and all kinds.

As a means of encouraging education The Republican presents Webster's New Standard Dictionary, illustrated. As soon as the success of this great distribution was assured cheap imitations of The Republican dictionary were offered to the public at seemingly low prices. But it must be remembered that counterfeits are costly at any price. Some unscrupulous publishers have taken their old dictionaries that are out of date, changed the title pages, pasted in a few pictures

and other irrelevant matter, and now offer these to the public, with the claim that they are of late compilation, because this year's date is on the title page. As a matter of fact, they are printed from old plates that served their usefulness years ago, and as our language is very changing, they are utterly unreliable and useless.

It is said that imitation is the sincerest flattery. The Republican's successful educational campaign is doubtless envied by those who wish they might have thought of such a plan first. But there is only one Webster's New Standard Dictionary, illustrated, and it is presented by The Republican. There is only one way to get it, which is explained under the dictionary coupon on another page, and we trust all of our readers will avoid imitations and get the genuine as offered only by The Republican.¹

Equally vicious, untruthful and fraudulent is the following from *Seattle Post-Intelligencer* for January 3, 1912, *published during the pendency of this suit*:—

"It is the ordinary buyer of books that must be careful and guard against counterfeits. The *Post-Intelligencer* is distributing Webster's New Illustrated Dictionary. The object is to put an authentic and authoritative reference book into every home reached by the *Post Intelligencer* and to encourage education. As there are dictionaries on the market that are not all they are claimed to be, it behooves the average book buyer to be careful. There is only one way to get this wonderful book offered by the *Post-Intelligencer*, which is explained elsewhere under the dictionary coupon. It will be wise to clip that coupon today and get started in the right way to get the best dictionary on the market."²

¹Exhibit, Defendant's Advertisements, p. 67 (Aug. 31, 1911).

²Exhibit, "Additional Advertisements of Defendant's Book,"

These advertisements, by necessary implication, if not in direct terms, assert that defendant's book is the genuine, authentic Webster's Dictionary familiar to the public, and that complainant's books are imitation and counterfeit "Webster's", especially in view of the fact that defendant was competing on the same plan of distribution with a customer and licensee of complainant. This was a direct passing off of defendant's book as and for complainant's book.

Upon the cartons or wrapper in which defendant's dictionary is sold a label is used in the following form, and nothing else to indicate the actual publishers or to distinguish the books:—

WEBSTER'S
NEW STANDARD
\$4.00 **DICTIONARY** **\$4.00**
ILLUSTRATED
LIMP LEATHER—RED EDGES

And deceived purchasers testified that the dictionary they bought as and for a Webster came in the above wrapper.¹ The book was actually sold for only 98 cents, and the representation of it as a four dollar dictionary tended to deceive purchasers. A similar fraudulent device was enjoined in one of the early *Webster dictionary* cases (*Merriam v. Texas Siftings Co.*, 49 Fed. 944).

Defendant prosecuted this newspaper campaign with great vigor. Ambiguous, misleading and fraudulent statements run all through its advertisements. In all of them defendant describes its book as

¹*Record*, fols. 1187; 1271; 1364.

the well-known Webster's Dictionary in its latest edition, and phrases like the following are characteristic:

"'The Post' Will Distribute to Its Readers Entire New Edition of Webster".¹

"New Webster Dictionary is Placed Within Reach of 'Journal' Readers at Moderate Expense".²

"Complete, Accurate and authentic from cover to cover."³

"The latest, most accurate and authentic dictionary obtainable today . . . The old one is out of date . . . This is the MODERN dictionary."⁴

"Distribution of Webster's Dictionary."⁵

"Webster's Dictionary is the foundation of education."⁶

"IN SCHOOL . . . Has the unqualified indorsement of school and college authorities throughout the land. Founded on Noah Webster's dictionary, it is the fundamental work of our language. . . . This book has kept pace with PROGRESS and is now the only dictionary that is replete with ALL that is MODERN."⁷

"While he had one of the large dictionaries he found that the small one answered all purposes".⁸

"It is accurate, authentic and modern in every particular."⁹

¹Exhibit, Defendant's Advertisements, p. 112 (Feb. 5, 1911).

²Exhibit, Defendant's Advertisements, p. 70 (Oct., 1911).

³Exhibit, Additional Advertisements, etc., p. 9 (Aug. 16, 1911).

⁴Exhibit, Defendant's Advertisements, p. 71 (Oct. 15, 1911).

⁵Exhibit, p. 84 (Nov. 9, 1911).

⁶Exhibit, Defendant's Advertisements, p. 57 (Nov. 3, 1911).

⁷Exhibit, Defendant's Advertisements, p. 44 (Sept. 28, 1911).

⁸Exhibit, p. 97 (Nov. 6, 1911).

⁹Exhibit, p. 103 (Dec. 23, 1911).

"The St. Louis Post-Dispatch has provided a grand educational enterprise . . . Believing that nothing short of THE BEST will satisfy the demands of our reading public, we have decided upon Webster's New Standard Dictionary . . . which is the LATEST, most accurate and authentic dictionary obtainable today. Everybody should have a *New Dictionary*. . . The old one is out of date. . . This is the Modern Dictionary. . . This is not a 'Condensed' dictionary: it is not 'made over' for the purpose . . . But it IS an HONEST dictionary, bound in GENUINE limp leather; . . . it is a MODERN dictionary, brought down to this very day with 1911 copyright".¹

In view of the fact that it is complainant's dictionaries alone which have been universally adopted as standard in the schools, the fraud is manifest.

While defendant has taken the customary care to have plenty of what Judge Lacombe has called "arguable differences"², surely these advertisements are plainly fraudulent and they were actually deceptive.³ Surely they demonstrate the actual fraudulent intent with which defendant changed its title from *Crown Dictionary* to *Webster's Dictionary*. Without the fraudulent title the fraudulent advertising would have been impossible. The sure way to stop the fraudulent advertising is to enjoin the fraudulent title.

These advertisements were published in four hun-

¹Exhibit, Defendant's Advertisements, p. 65 (Sept. 14, 1911).

²*Scheuer v. Muller* (C. C. A.), 74 Fed. 225, 228; *Paris Medicine Co. v. Hill*, 102 Fed. 148, 150; *Liebig's Extract of Meat Co. v. Chemist Co-op. Soc.*, 13 R. P. C. 635.

³See testimony of purchasers actually deceived, *ante*, pp. 35-37, and Appendix, *post*, pp. 41 et seq.

cred newspapers, and the defendant argued in its brief below that it had succeeded by this method of advertising in selling as genuine "Webster's" between 500,000 or 600,000 copies of what is really the British Empire Dictionary. Wherever such methods of advertisements were employed, complainant's business was temporarily brought almost to a standstill.¹

No cessation of fraud before or after suit.

Until this suit was imminent and until just before the filing of the bill, defendant made not the slightest pretense of distinguishing its dictionary from the dictionaries of complainant. Aside from the affirmatively fraudulent features of its advertisements, the name Webster, used without any explanation, itself amounted to an artifice fitted and designed to deceive (*Singer case*, 163 U. S. 169). The name itself would deceive (*Hall's Safe case*, 208 U. S. 554). Even after the bill was filed, many of defendant's advertisements contain no explanatory statement.² And even after the preliminary injunction, defendant furnished to newspapers plates for advertisements without any explanatory statement.³ After notice of the impending suit, however, and recognizing that it had not complied with the rule declared in the *Ogilvie case*, defendant inserted in most but not in all,⁴ of its advertisements, and upon its books an alleged explanatory statement (*Ex. vol. II*, p. 1152).

¹*Ex. vol. I*, pp. 229, 235-6, 238, 240, 239.

²See Exhibit, Defendant's Advertisements, pp. 219, 225, 227, 229, 232, 234, 235, 236, 237, 239, 241, 242, 243, 244.

³*Ex. vol. II*, 244, 245, 246, 247, 248. Exhibit, Defendant's Advertisements, pp. 21, 22, 23, 24, 25.

⁴See Exhibit, Defendant's Advertisements, pp. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38.

Decision below and comments thereon.

The question of defendant's actual fraud was not specifically passed upon. The theory and grounds upon which the bill was dismissed are shown by the quotation printed in the margin¹, from which it is

¹Judge Hand said (*Rec. vol. III*, pp. 2067 *et seq.*):—

"Therefore, the defendants had the qualified right to call their books 'Webster's,' provided they properly distinguished so as to cut out the secondary meaning, and the only question which can remain is, whether the statement upon the title page of the books is sufficient notice, since the books were properly marked upon the back. The form of the notice is that set forth in the final decree of the Circuit Court for the District of Massachusetts, as contained in 190 Fed. R., at page 931. The only criticism which I can make upon the printing at the top of the page is that it is in rather small type. Had the attitude of the complainant been different when the defendants approached it with a view of adopting their make-up to the terms of the Massachusetts decree, I might now be willing to take up the question whether that notice ought not to be more conspicuous upon the page, but I am not disposed to indulge this complaint in such a way in the case at bar. When the defendants each approached its officers in a *bona fide* effort to accommodate themselves to the utmost rights which the complainants had up to that time enjoyed, they were met with a demand for absolute discontinuance of the name; they are met with it here. This was illegal and had been so adjudged against this complainant in the very decree which is the basis of any supposed right they may have in the name 'Webster.' They certainly by such a claim absolved the defendants from any nice adaptation of their typography to the terms of that decree, and I shall not inquire whether it gives the fullest protection to which the complainant is entitled.

* * * * *

"I have looked over all the advertisements of the Syndicate Publishing Company, which make a very shoddy kind of appeal, but after the date when the defendants attempted to come to terms with the complainant they appear usually to bear the addition which the complainant procured as the measure of its relief in the Ogilvie case. As to those which do not and which for the most part are in the form of news articles, I find no evidence to contradict the *bona fides* of the defendant's efforts to conform the advertisement with the decree and I am not disposed to charge them with such as continued to appear. The prominence and form of the suffix must be held satisfactory in

seen that the decision was rested entirely upon three points, viz:— (1) the alleged literary descent of defendant's book; (2) the alleged adoption by defendant of an explanatory suffix; and (3) the incomprehensible statement that bringing this suit was "illegal", and a tort against defendant. Of these in enumerated order:—

(1) The question of literary descent has been already discussed, and the error indicated (See *ante*, p. 66 *et seq.*).

(2) The court's suggestion that defendant adopted an explanatory suffix before suit brought, and that complainant is entitled to no relief because it did not accept that as the full limit of its rights against this book is erroneous both in law and fact.

view of the complainant's attitude towards the defendant when approached, and its illegal claim of a monopoly in the name. If the defendant was content to yield to the terms of the Ogilvie decree, it might upon the complainant's demand have been subject to some modification of its advertisements as of its title page. That right justified no such proceeding as this, designed to do just what the complainant was forbidden to do in the First Circuit.

"As to the Cupples & Leon Company, I am in more doubt, the testimony of Leon is of very unsatisfactory character and his claims to a dictionary upon which the defendant had done any substantial work, are not justified. The advertisements are not warranted by the facts, for it is in no sense the modern book it professes to be. I do not believe that the defendant knew or in the least cared what was its contents, if it would sell as an up-to-date book. However, that gives no rights to the complainant, so long as its own limited use of the name is not infringed. None of the advertisements attempt to pass off the books as the complainant's, and it cannot object that the public is buying as a modern Webster substantially the old Crown Dictionary. The law may some day protect one man who sells a sound quality of goods so described against another who sells an unsound quality, dishonestly described, but it has not done so yet. Now we trust to the public to find out that they have been hoodwinked, and to distinguish."

First, the opinion itself concedes that the explanatory statement was never adequately displayed or used, either on the books or advertisements, even down to the date of final hearing, which was equivalent to using no notice at all. The position taken that because complainant claimed a right to greater relief, and brought this suit to have that claim adjudicated, the court would not inquire into, or give it, such relief as it proved itself entitled to, is simply too astounding for counsel to comprehend.

Again, the opinion concedes that even long after the commencement of the suit defendant issued advertisements containing no explanations whatever,¹ and other viciously fraudulent advertisements appeared within a few days of the filing of the suit (on Nov. 9th, 1911), without the explanatory suffix, although defendant claims to have adopted it on Oct. 9, 1911.²

Further, a preliminary injunction was granted herein by Judge Coxe on March 20, 1912, requiring defendant to change both the form and display of its explanatory statement, and to add other distinguishing features to its books.³ Defendant denied and contested, both on the preliminary motion and at final hearing, its obligation to use any form of explanation. Not until compelled by the writ of injunction did defendant conform even to the requirements of the

¹See instances given, *ante*, pp. 94-97 of this brief.

²See examples in the scrap-book exhibit of defendant's advertisements, pp. 60, 62, 63, 64, 69, 71, 75, 97.

³The preliminary injunction provided that the Ogilvie form of notice should be used, with the word "not" emphasized; that it should be plainly printed and prominently displayed in a separate line or paragraph by itself; that defendant's name should be printed not only on the title-page but also on the back of the dictionaries, and enjoined any form of title-page, back, or advertisement that was in any way calculated to deceive.

Ogilvie decree. Manifestly complainant was justified in bringing suit, and in refusing to accept defendant's construction and application of the *Ogilvie* decree. The relief granted by Judge Coxe was taken away at final hearing, although the abstract right to it was conceded, and the proofs required a much broader injunction.

Moreover, although defendant was familiar with the requirements imposed in the *Ogilvie* case, it made no pretense of conforming thereto from 1908, when it first adopted the name, until October 9, 1911, and during this period used no explanatory suffix whatever.

Defendant says that on October 9th it ordered the *Ogilvie* form of cautionary notice to be inserted in its books and advertisements. The *Ogilvie* form of notice was:

"This dictionary is not published by the original publishers of Webster's dictionaries or by their successors."

The form of notice used by defendant, until it was compelled to change it by the preliminary injunction granted by Judge Coxe, was as follows:

"This dictionary has been revised and brought up to the PRESENT DATE in accordance with the best authorities and is NOT published by the original publishers of Webster's dictionary or by their successors, but by the well known SYNDICATE PUBLISHING COMPANY of New York City." (*Rec. vol. II*, pp. 1184, 1152.)

Manifestly this changed the required explanatory statement from a warning notice to a boastful recommendation. It is ambiguous and deceptive. It is a merely colorable,—not an honest effort to distinguish. The evident purpose to comply with the letter of the

Ogilvie decree, and yet to frame a notice that would not really distinguish, is proved by the circular letter which defendant sent to newspapers after the injunction herein requiring defendant to change its form of notice and to print it in a distinctive manner. This disingenuousness of this letter (*Rec. vol. II*, fols. 4763-4766), appears in its opening paragraph:

"We are pleased to advise you that the United States District Court has recently confirmed our opinion as to the advisability of clearly marking the difference between our modern up-to-date dictionaries and the antiquated and often obsolete editions offered to the public by other publishers. It is, therefore, necessary that in all our display advertisements, reading notices, coupons or other announcements in your paper the following cautionary notice be inserted:" etc.

This whole letter should be read. It shows clearly that defendant never intended, nor in good faith attempted to distinguish its books. The letter suggests to the newspaper distributors that defendant's position had been sustained in the courts, whereas in truth it had been defeated and enjoined. Such a letter was ill-calculated to insure insertion of the warning words, and defendant is chargeable with the subsequent frequent omission of them. It also shows that defendant went as far in continuing its original practices as the letter of the injunction would allow.

The actually fraudulent advertisements already referred to are themselves actionable, whether or not they contain the suffix; it is not an immunity bath purging all other fraud.

Actual and threatened infringement of complainant's rights, even as limited below, both before and

after suit brought was proved and found. Defendant has at all times denied and contested any obligation upon its part to use any explanatory statement whatever, insisting that the mere printing of its own name in the publisher's imprint upon the book is sufficient.¹

Under the circumstances, actual and complete discontinuance of infringement would be no bar even to the granting of a preliminary injunction, and especially not to an injunction at final hearing, where a denial of it would adjudge defendant's right to continue the infringement.² But this defendant did not discontinue its infringement.

Finally, and most important of all, the main purpose of this suit was to have it judicially determined whether this particular British Empire, or Crown Dictionary is entitled to describe itself as Webster's Dictionary. Defendant has never been willing to quit using the name "Webster's" as the chief title word of this book; it was willing to add some form of suffix, but it would not drop that name. Complainant insisted, and now insists that this particular book is not entitled to be called "Webster's". Defendant refusing to drop the name, this suit was the only alter-

¹*Wright, Rec. vol. II, fols. 4397, 4469.*

²*Clark Thread Co. v. Wm. Clark Co.*, 55 N. J. Eq. 658; *Ricker v. Leigh*, 74 App. Div. (N. Y.) 138; *Saxlehner v. Eisner* (C. C. A.) 147 Fed. 189, 191 (where it is said: "The interposition of such an answer indicates that complainant was quite justified in anticipating that at any time in the future some infringement of such label might be put on the market by defendants"); *Saxlehner v. Eisner*, 88 Fed. 61; *Dwinell-Wright v. Co-Operative Supply Co.*, 148 Fed. 242; *Thomas G. Plant Co. v. May Mercantile Co.*, 153 Fed. 229, 231. "It may have repented but it has transgressed, and it even now asserts rights greater than we think it has. Therefore the injunction must stand." *Herring-Hall-Marvin Safe Co. v. Hall Safe Co.*, 208 U. S. 554, 560.

native. The evidence already recited amply shows that complainant was justified in this demand. Yet the extraordinary statement is made in the opinion below:

"This was illegal and had been so adjudged against this complainant . . . its illegal claim of a monopoly in the name. . . . That right justified no such proceeding as this designed to do just what the complainant was forbidden to do in the First Circuit (*Rec. vol. III*, pp. 2068, 2069, 2070).

As this rests entirely upon a misapprehension of the decision and decree in the *Ogilvie* case, the exact language of such decision and decree is quoted in the margin,¹ from which it conclusively appears:

¹The language of Judge Colt in ordering the injunction was: "The Merriam Company should be enjoined from sending out circulars to the effect that they have the exclusive right to the use of the name 'Webster' in the title of dictionaries" (149 Fed. 858, 864). On appeal the language of the Circuit Court of Appeals was: "The Merriam Company should be enjoined from sending out circulars to the effect that it has the exclusive right to use the name 'Webster' in connection with dictionaries" (159 Fed. 638, 640). The decree as actually entered is as follows: "That a perpetual injunction issue in this suit restraining the defendant, the G. & C. Merriam Company, its officers, agents, attorneys, and servants, and all others claiming or holding through or under it, from publishing or issuing circulars, advertisements, or notices stating in form or effect, or in any manner claiming, that it, the defendant, or any other person, firm or corporation claiming under or through it, has exclusive right to the use of the name 'Webster' in the title of dictionaries. That a perpetual injunction issue in this suit, restraining the cross-defendant, George W. Ogilvie, his agents, attorneys, servants, employees, and all persons claiming or holding through or under him, from using as the name or title of his said dictionaries, described in the amended cross-bill herein, to which this litigation relates, the words, 'Webster's Dictionary,' or 'Webster's Imperial Dictionary,' or 'Webster's Universal Dictionary,' or any equivalent thereto, upon the titlepage, or upon the back or cover of said dictionaries, or in any advertisement, circular, notice, or announcement referring to said dictionaries, unless

(1) Complainant was not enjoined in that case from filing bills in equity for relief against fraudulent competition by a misuse and abuse of the name Webster; such a cross-bill was maintained in that very case, which awarded relief to cross-complainant. (2) It was adjudged to be illegal for complainant to *circularize* Ogilvie's customers with a claim of exclusive right to the word Webster in the title of dictionaries. But complainant has not done that in this case, and although it was *only circularizing* which was enjoined, not the bringing of suits, even this suit does not claim such an exclusive right. The bill claims relief against only a false and fraudulent use of the name Webster upon a particular book in which it is supported by the Ogilvie decision. (3) Again there is no privity between defendant and Ogilvie, and that decree is not *res judicata* between these parties.¹ (4) The demand that defendant quit using the name Webster's upon this particular book, the British Empire, or Crown

accompanied by the following statement, plainly printed upon the title-page, and in each said advertisement, circular, notice or announcement, namely: "This dictionary is not published by the original publishers of Webster's Dictionary, or by their successors"—and especially from publishing or issuing in their present form the title-pages and backs of his said dictionaries and the circulars and advertisements in this suit adjudged misleading or deceptive, or in any other form of title-page, back, circular, or advertisement that is in any way calculated to deceive purchasers into purchasing complainant's dictionary under the belief that it is a Webster's dictionary published by the G. & C. Merriam Company." This decree is quoted and construed in *Merriam v. Saalfeld*, 190 Fed. 927, 931.

¹Defendant herein pleaded in its answer the Ogilvie decree, but the Court below expunged it as impertinent, because not *res judicata* between these parties, and refused leave to defendant to file a cross-bill setting it up, for the same reason, and because the bill did not claim an exclusive right in the word "Webster" *simpliciter* (Opinion of Hough, J., on motions, Jan. 23, 1912, unreported).

Dictionary because it is wholly false and fraudulent in that connection, is not an "illegal claim of a monopoly in the name". (5) The decision that Ogilvie was entitled to call his book "Webster's", provided he used an explanatory suffix, because it was revised directly and actually from the 1847 Webster, does not decide that this defendant may import a British dictionary of different name and ancestry, and deceptively rename it Webster's. Complainant has not been forbidden in the first, or any other, Circuit, from suing to enjoin such a palpable fraud. There is no vestige of impropriety in this suit. Yet the court below, upon the theory of some such impropriety, denied complainant even the relief to which the court conceded it was otherwise entitled.

The statement in the opinion that complainant "cannot object that the public is buying as a modern Webster substantially the old Crown Dictionary",

is confidently challenged. Repeated injunctions in almost those express words have been granted to complainant in contested cases.¹ It is insisted that com-

¹In *Merriam v. Texas Siftings Pub. Co.* (49 Fed. 944), the final injunction restrained the defendant from all acts "which tend to misrepresent the character of the edition of Webster's Dictionary offered for sale by defendant, and to mislead the public into the belief that it is a reproduction of a modern edition of that work which is manufactured and sold by the complainants, . . . and from the sale and delivery of any of said books without placing in each of the books so sold and delivered, upon a printed slip attached to the title-page thereof, a notice that it is a reprint of the edition of 1847, together with a list of the additions that have been made thereto and which the book contains." (Writ dated April 5, 1892.) Identical or closely similar language was used in the final decrees in: *Merriam v. Famous etc. Co.* (47 Fed. 411); *Merriam v. T. H. Robinson Stationery Co.* (Northern District of Texas, Feb. 24, 1891, unreported); *Merriam v. Adams* (S. D. of N. Y., Dec. 2, 1892, unreported).

plainant may object that defendant's old Crown or British Empire Dictionary is being sold as a "modern Webster", because that passes it off as complainant's product and thus invades complainant's trade and good-will. Complainant has a special interest or property right in the "secondary meaning" of the name Webster,¹ if not in the name itself, and complainant is entitled to complain of the special injury resulting to it from defendant's fraud on the public. As Mr. Justice Holmes said in the *Van Den Berg* case (226 U. S. 452):—

"Imposition on the public is not a ground on which the plaintiff can come into court."

But when the imposition consists in imposing upon the public the defendant's goods as and for the complainant's goods by a false use of a name, as in this case, the complainant may object and obtain relief. The distinction is very clearly pointed out by Mr. Justice Day in the "*Aluminum Wash Board*" case (*American Washboard Co. v. Saginaw Mfg. Co.*, [C. C. A. 6th Cir.] 103 Fed., at pp. 284, 285). The case at bar comes squarely within the rules there stated.

An injunction should have been granted restraining defendant's false use of the name "Webster's", and, in any event, the deceptive manner of using it, and the fraudulent advertisements, should have been enjoined.

¹"Such secondary signification, when established, is the subject matter of exclusive right." *Chickering v. Chickering* (C. C. A., 7th Cir.), 215 Fed. 490. "Others may use the common word in its common meaning, but they cannot use it in the particular meaning created by the complainant." *Hanover Star Milling Co. v. Allen* (C. C. A., 7th Cir.), 208 Fed. 513, 517.

"Whether it is the name of a former (but no longer) patented article, or is the title of a book with expired copyright, it has become the maker's or the publisher's token and differs from a technical common law trade-mark mainly, if not wholly, in the fact that the proprietor's right is not of absolute but of qualified exclusion." *Merriam v. Saalfeld*, 198 Fed. 375.

V.

DEFENDANT CANNOT JUSTIFY ITS USE OF THE NAME "WEBSTER'S" BY ASSERTING THE EXPIRATION OF COPYRIGHT UPON THE 1847 EDITION, BECAUSE: (1) DEFENDANT DOES NOT PUBLISH THE EXPIRED EDITION, OR EVEN A REVISION OF IT; AND (2) THE TITLE AND GENERIC NAME OF THE EXPIRED BOOK IS "AN AMERICAN DICTIONARY",—NOT "WEBSTER'S DICTIONARY."

(1) *Expiration of early copyrights no defense.*

It is immaterial and futile for defendant to say that the copyright has expired upon the 1847 edition of Webster's Dictionary. Defendant does not issue or use that edition. It does not avail itself of the dedicated property. It does not use the name in its primary descriptive and public sense, in which alone it is entitled to use it, or could have any honest need for using it. Its book is a copy of the British Empire, or Crown Dictionary, and not a revised or abridged edition of the 1847 Webster (see point III, *ante*, pp. 64 *et seq.*). No rule of law, and no decided case supports defendant's application of the name Webster to such a book.

The early "*Webster's Dictionary Cases*"¹ held that

¹*Merriam v. Texas Siftings Pub. Co.*, 49 Fed. 944; *Merriam v. Famous, etc., Co.*, 47 Fed. 411; *Merriam v. Holloway Pub. Co.*, 43 Fed. 450. It was in this last case that, in overruling the claim then made of an absolutely exclusive trade-mark right in the words "Webster's Dictionary" preventing their use even in connection with a reprint or republication of photolithographic copies of editions on which the copyright had expired, that Mr. Justice Miller characterized this extreme claim as nonsense, and yet this word was again and again cited in defendant's brief as if the Court had then said that the Merriams' claim to be protected against unfair and fraudulent competition in the use of the title or name "Webster's Dictionary" was all nonsense. The contrary was adjudged and a demurrer to the bill was overruled.

the expiration of copyright on the 1847 edition of Webster's Dictionary authorized any one to republish that dictionary under that name, provided such reprints were not misrepresented or passed off as and for the modern "Webster's Dictionary" then being published by complainant.¹ The later "*Webster's Dictionary* cases"² held that revised or abridged editions, actually and honestly revised or abridged from the expired book

¹Mr. Justice Miller said in the *Holloway* case, *supra*: "Taking all of these allegations together, there may be some evidence of a fraudulent intent on defendants' part to get the benefit of the reputation of the edition of Webster's Dictionary which the complainants are publishing, and it may possibly be that, in consequence of the facts averred, the public are deceived, and that the complainants are damaged to some extent." Judge Thayer said in the *Famous* case, *supra*: "In view of these features of the bill, and the allegation that many people have been induced to buy copies of the 'Famous Reprint' in the belief that they were copies of the edition of 1864 of Webster's Dictionary, and in view of the averment that the reputation of complainants' dictionary, which they have been at great trouble and expense to prepare and improve, has been thereby greatly damaged, and the sales thereof largely decreased, I must conclude that, on the showing made, complainants are entitled to some form of equitable relief. If it be true that, by the means described in the bill, the public have been deceived, and the complainants have sustained damage, then the defendant has no right to suppress in the reprinted work all parts of the original publication which would show that defendant's book is merely a reproduction of an old edition of Webster's Dictionary, and at the same time make representations to the public, that are liable to be construed as an assertion on the part of defendant that its cheap edition of the dictionary is the same book which complainants are publishing and selling." This decision was followed by Judge Shipman in the *Texas Siftings* case, *supra*.

²*Merriam v. Saalfeld* (C. C. A., 6th Cir. 1912), 198 Fed. 369, 190 Fed. 927; *Merriam v. Ogilvie* (C. C. A., 1st Cir. 1908), 170 Fed. 167, 159 Fed. 638, 149 Fed. 858; *Merriam v. Straus*, 136 Fed. 477.

could describe themselves as such,¹ and use the name, provided an adequate explanation accompanied the name so as to cut out the secondary meaning. All the cases from the beginning held that no one has a right to use the name so as to get the benefit of the reputation of complainant's later editions.

—*Doctrine of the "Singer" cases.*

The defendant invokes and relies upon the doctrine of the "*Singer*" cases² in this court, as applicable to its publication. The statement of this doctrine, as summarized and formulated in the opinion of Mr. Justice White, is quoted below.³ This doctrine has

¹It cannot, perhaps, be too often repeated or emphasized that it was not contended in the cases below on behalf of the complainant that Webster's original publications or any subsequent publications of which the copyright has expired may not be now reprinted and republished by any one. They are concededly public property. But it was and is contended that an essentially different and unaltered book ought not to be now published under the same title as the original publication, and certainly not when accompanied by the business methods adopted by the defendant in an unfair competition with complainant. The complainant has never even remotely denied "that any honest compilation or abridgment at the present time of Webster's work is entitled to describe itself as such" (*supra*, III, 341, 3235). But it is contended that such a compilation as the "*Crown*" or "*British Empire*" is not an honest compilation at the present time of Webster's work and that in any event it is not entitled to masquerade as the Webster's Dictionary as now known to the public.

²*Singer Mfg. Co. v. Jané Mfg. Co.*, 153 U. S. 169; *Singer Mfg. Co. v. East*, 153 U. S. 205.

³"That where, during the life of a monopoly created by a patent, a name, whether it be arbitrary or be that of the inventor, has become, by his consent, either express or tacit, the identifying and generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created. Where another builds himself up this public designation, to make the machine, and use the generic designation, he can do so in all forms, with the fullest liberty, by affixing such name

been universally accepted and followed. Complaints are confidently relied upon this decision as a conclusive authority in its favor. There exists a remarkable analogy in many of the facts. This court very plainly said that the only right of the defendant to use the name "Singer" upon sewing machines was in connection with machines made in accordance with the original Singer patents, and of the type or character of which Singer had become the generic name. Subsequent cases have so construed and applied it,¹ and when other users of the name sought to apply it to machines not made in accordance with the Singer patents, they were promptly and absolutely enjoined.²

As to the machines, by referring to § in advertisements, and by other means, adapted, however, to the condition that the name must be so used as not to deceive others of that right, as to deceive the public; and, therefore, that the name must be accompanied with such indication that the thing designated is the work of the one making it, so as not unreasonably to harm the public of that fact.³ (17 C. S. 66.)

Philosophy Comp. Co. v. Holmberg et al., 10 C. S. 473, 1 S. 100; *Jaffe v. Evans*, 75 App. Div. (N. Y.) 109 (1st District); *Conover Co. v. Southern* (E. E. A.), 10 Fed. App. 900 (Circuit); *Conover Co. v. Manchester* (E. E. A.), 10 Fed. App. 122; *Conover Co. v. Kellenger*, 10 Fed. App. 727.

Singer Mfg. Co. v. Hupac, 100 Fed. App. 109, where Circuit Judge Taft granted an absolute injunction because the sewing machine sold by the defendant was not in fact a "Singer". After discussing the decision of the Supreme Court, the learned judge continued as follows (at p. 122): "It is true that the defendant's article does in fact a 'Singer' machine, the work is as liberty to as Hupac's; provided the also clearly and unmistakably specified that it was not the product of the Singer Company; but the sentence, as I view it, is against the user the main point, and therefore the means of marketing need not be considered. The machine itself did give upon the market it was a 'Singer'. That word is not in a sense for it alone necessary of appropriation. Nor can I see in the contention that the machine is a developed or improved 'Singer'. As the word is that it is of a distinct type which it was long has been known as the 'domestic'. Consequently the defendant's employment of

So here, defendant has applied the name of the American "Webster's Dictionary" to an unrelated British dictionary. Nothing in the *Singer* case affords any warrant for such conduct and justification, if any is possible, must be sought elsewhere.

The principle of the *Singer* cases was involved in *Jacobs v. Beecham*, 221 U. S. 263, where the defendant was enjoined from selling as "Beecham's Pills", a preparation which was not "Beecham's Pills", because not made in accordance with plaintiff's secret formula. So in *Baglin v. Cusenier*, 221 U. S. 580, the name "Chartreuse" was enjoined as the name of a liqueur not made in accordance with the secret formula of the French monks, and therefore not in truth "Chartreuse".

The doctrine of the *Singer* cases (163 U. S. 169 and 205) was the doctrine applied in the three early *Webster* dictionary cases (43 Fed. 450; 47 Fed. 411; 49 Fed. 944), which are quoted and applied. During the life of a patent or copyright, the name of the article or book is the generic name of the thing and is not a trade-mark, because it is descriptive of the thing. It may, therefore, be used by any one, even during the life of the patent or the copyright, who deals in that specific thing, because that is making a truthful use of the name. *Johnson v. Seaman* (C.C.A.), 108 Fed. 951; *Vitascope v. U. S. Phonograph Co.*, 83 Fed. 30. But although the name of a copyrighted book or patented article is not a trade-mark, no one may apply that name to a different competing article or book of

the word 'Singer' can have but one result, and that is, not to correctly identify the thing itself, but to mislead the public as to its source of origin; and, this being so, the decision in *Singer Mfg. Co. v. June Mfg. Co.* does not support, but subverts, her present position."

the same general kind, because this would be a false description tending to pass off such different goods as being the patented article or copyrighted book. *Shook v. Wood*, 10 Phil. (Pa.) 373; *Janney v. Pancoast Ventilator Mfg. Co.*, 128 Fed. 121; *Adam v. Folger*, 120 Fed. 260; *Hoffman v. B. Kuppenheimer*, 183 Fed. 597; *In re Palmer's Trade-Mark*, L. R., 24 Ch. Div. 504. The only effect of the expiration of the copyright or the patent is to enable every one to make the genuine article, and if he does make such article, he may call it by the generic name by which alone it has always been known. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Holzappels Co. v. Rathjen's Co.*, 183 U. S. 12; *Merriam v. Famous, etc.*, 47 Fed. 411; *Merriam v. Texas Siftings Co.*, 49 Fed. 944; *Merriam v. Holloway*, 43 Fed. 450. If, however, long use during the statutory monopoly or afterwards has given the name the secondary meaning indicating that all goods bearing that name are the product of the original proprietor, the subsequent maker of the goods and user of the name must accompany the name with an explanatory statement adequate unmistakably to distinguish the goods. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co.* (C. C. A.), 166 Fed. 26. Neither a patent nor a copyright confers any exclusive right to any particular name, but only confers the exclusive right to make and sell the article or book to which that name is applied. *Centaur v. Heinsfurter*, 84 Fed. 956, per Mr. Justice Brewer; *Atlas Mfg. Co. v. Street* (C. C. A.), 204 Fed. 398; *Harper v. Ranous*, 67 Fed. 904, per Lacombe, J.; *Corbett v. Purdy*, 80 Fed. 901. The name is just as much generically descriptive, and *publici juris*, during the life of the monopoly as afterwards.

The only reason why others may not use the name before expiration of the copyright or patent is because they cannot use it truthfully. The only reason why others may use the name after expiration of copyright or patent is because they may and do use it truthfully. If they do not use it truthfully, either before or after expiration of the statutory monopoly, they may not use it at all in a competitive business, where it would be a false token. *Atlas Mfg. Co. v. Street* (C. C. A.), 204 Fed. 398; *Black v. Ehrlic*, 44 Fed. 793. Of course, there is never any property *in gross* in a mere name or mark,—not even in a technical trade-mark. It is only the right to use it in a particular connection that may be owned. *Hanover Star Mills Co. v. Allen*, 208 Fed. 573, 576. And only a like right can be dedicated.

In the latest Webster Dictionary case, *Merriam v. Saalfeld* (C. C. A., 6th Cir., 1912), 198 Fed. 369, 374, Denison, C. J., used this language.

"The situation arising under an expired patent or copyright cannot be differentiated from that arising with reference to any other descriptive word. There can be no trade-mark or similar exclusive right in what has been, during the life of the patent or copyright, the name of the patented article or copyrighted book, not because of any particular rule of trade-mark or patent law, but because the word, during the term of the monopoly, has come to be a word of apt description. It has come to be the name of the thing, and hence anyone who later makes the thing may call it by its true name. Neither is there anything peculiar in the application of the secondary meaning theory to this class of cases. It is to be applied just as with reference to any descriptive word, and if, after the word comes into existence and becomes free to the public as the name of the thing, it is

used by one manufacturer so long and so exclusively that it comes to be, to that part of the public, indicative that it is his product, he is entitled to protection for the same reasons, in the same way and to the same extent as held with reference to 'Camel's Hair Belting' (*Raddaway v. Benham*, App. Cas., 1896, p. 199), 'Glenfield Starch' (*Wotherspoon v. Currie*, L. R., 5 H. L. 508), 'Elgin' or 'Waltham' watches (*Elgin Co. v. Illinois Co.*, *supra*; *Am. Watch Co. v. U. S. Watch Co.*, 173 Mass. 85, 53 N. E. 141, 43 L. R. A. 826, 73 Am. St. Rep. 263), or 'Hall's safes' (*Herring, etc., Co. v. Hall, etc., Co.*, 208 U. S. 554, 28 Sup. Ct. 350, 52 L. Ed. 616).

"Exactly so, and of necessity, with regard to this copyrighted book. . . . Whether it is the name of a formerly (but no longer) patented article, or is the title of a book with expired copyright, it has become the maker's or the publisher's token, and differs from a technical common-law trade-mark mainly, if not wholly, in the fact that the proprietor's right is not of absolute, but of qualified, exclusion."

Other cases support the view that the expiration of a patent or copyright does not authorize the use of the name of the patented or copyrighted article as the name of another and substantially different competing article, and that such use constitutes unfair competition which will be enjoined. "*Chatter-box cases*," 21 Fed. 189; 27 Fed. 23; 31 Fed. 154 (uncopyrighted books); *Thomas v. Lennon*, 14 Fed. 849 (uncopyrighted opera); *Metzler v. Wood*, 8 Ch. Div. 606 (uncopyrighted book).

In the *Ogilvie* case, 149 Fed. 858, (C. C. A.) 159 Fed. 638, it was held that the expiration of copyright upon the 1847 edition of Webster's Dictionary authorized anyone to publish a revised edition of that book

under the name of Webster's Dictionary, provided an explanatory statement accompanied such use of the name. This was placed upon the assumed doctrine of the *Singer* case which was deemed controlling. But this decision does not aid defendant here both because its book is not a revision of Webster's Dictionary, and because it has used the name without any explanatory notice. Ogilvie's book was a direct revision of the 1847 edition of Webster's Dictionary, and approximately one-half of it was shown to have been reproduced word for word from the printed Webster page.

In *Dicks v. Yates*, 50 L. J. Ch. N. S. 809, 815, Lord Justice James, distinguishing unfair competition in books from infringement of copyright, said:

"There is another mode which, to my mind, is wholly irrespective of, and anterior to, any copyright legislation, and that is where a man is selling a work under the name or title of another man or another man's work. That is not invasion of copyright. It is a common law fraud. It is to be redressed, and is capable of being redressed, by ordinary common law remedies, wholly irrespective of any of the conditions or restrictions imposed by the Copyright Acts. Suppose a man were to publish a book of cookery, calling it as 'Soyer's Cookery Book', which it is not; or of arithmetic, as 'Colenso's Arithmetic,' which it is not; or 'Hemy's Pianoforte Tutor' (as in the case of *Metzler v. Wood*, before the Court of Appeal), which it is not;—that is a common law fraud."

(2) "*Webster's Dictionary*" Not The Title of Book with Expired Copyright.

As a matter of fact the words "*An American Dictionary*" and not the words "*Webster's Dictionary*"

were the generic name of the 1847 edition, and prior editions, upon which the copyright has expired.¹

This book was copyrighted under the name of "An American Dictionary," which name was duly registered in the Copyright Office.² Contracts conveying the copyright of this book conveyed it by the name of "An American Dictionary."³

Under the copyright law every copyrighted book is known by an official title, which title must be recorded in the Copyright Office, and must appear upon the title page of every copy. That official recorded title is the generic name and description of that particular book by which it is identified, and upon expiration of the copyright, that is the name or title which is dedicated to the public together with the book which it describes.

A wide distinction exists in this regard between copyrighted books and patented articles. A copyrighted book must bear an official title by which the book copyrighted may always be known and described. Patented articles, upon the other hand, are not given any official name, but acquire a market name by common acceptation and user, and are only known and described by the name thus acquired.

The dedication of literary works by publication is wholly a creature of the copyright statute. The common law copyright was perpetual. The copyright statutes are, therefore, in so far as they work a dedication, in derogation of the common law, and are to be

¹See *1847 Edition Filed as Exhibit*. See also *Title Pages, etc.*, *Rec. vol. I*, pp. 671, *et seq.*

Peck, Rec. vol. III, p. 1597, fol. 6386.

²See *Copyright Certificates, Rec. vol. I*, pp. 730, 731.

³*Early Contracts & Assignments, Rec. vol. I*, pp. 783, *et seq.*

strictly construed. It is fair to hold that, upon the expiration of the copyright, the right to publish the book and to call it *by the name under which it was copyrighted* becomes public property. But no good purpose is subserved by holding that distinguishing marks or names placed upon the outside cover likewise become public property, and it has never been so held.¹ The copyright law does not deal in any way with the outside cover of books. Its provisions in regard to the title relate only to the title page. Names and marks upon the cover are not protected by the copyright law. Then how can such names or marks be dedicated to the public by expiration of the copyright? To hold that they are so dedicated, extends the statute by mere construction to matters as to which it makes no provision whatever.

Defendant is invoking an assumed technical rule of law to permit it to perpetrate a fraud. Equity will keep it strictly within the legal rule, and will be equally technical in order to prevent a fraud.

It is true that the three early *Webster Dictionary* cases held that the words "Webster's Dictionary" became public property with the expiration of the copyright upon the 1847 edition. But this holding was based upon a *mistake of fact*, Judge Thayer expressly saying that the name "Webster's Dictionary" appeared upon the title page (47 Fed. p. 413). As this was not the fact, and it was the words "An American Dictionary" which appeared upon the title page, it is the latter

¹Distinctive names, labels and marks used upon patented articles do not become free to the public upon expiration of the patent. *Singer Mfg. Co. v. Bent*, 163 U. S. 206; *Batcheller v. Thompson* (C. C. A.), 93 Fed. 660; *Centaur v. Neathery* (C. C. A.), 91 Fed. 891; *Hiram Hoit Co. v. Wadsworth*, 41 Fed. 34.

title, and not the former, which became public property along with the rest of the work.¹ The words "Webster Dictionary" appeared merely upon the cover and were the technical trade-mark or trade-name for complainant's and its predecessors' entire series of dictionaries.

If, however, it should be held that by complainant's acquiescence, and by public understanding and user, the words "Webster's Dictionary" became the generic name of the 1847 edition, then *by the same token those words remained the generic name of the 1847 edition only so long as such understanding and user continued*. It ceased more than forty-two years ago. For more than forty-two years "Webster's Dictionary," by public understanding and user, has been the name of a substantially different book, to wit, first, the edition of 1864 with its supplements, and abridgments, and now the later current editions. "Webster's International Dictionary," is the registered copyright title of complainant's edition of 1890, and subsequent years, and the name "Webster's" appears in the registered copyright titles of all complainants abridgments. These copyrights have not expired. Both by law and by public understanding and user, "Webster's Dictionary" is the generic name only of complainant's present books. When the copyrights thereon expires, all the world may publish and sell them by that name. But so long as they are published and sold and known

¹Attention is called to a manifest error in the *Ogilvie* and *Saalfeld* decisions, consisting in a statement that *the name* "Webster's Dictionary" had been copyrighted and that the copyright upon the name had expired. *Ogilvie* case, 159 Fed. 640; *Saalfeld* case, 190 Fed. 929. As a matter of fact that name had not been copyrighted, or even registered as a title, and as a matter of law, mere names cannot be copyrighted.

in the market by that name, no person is entitled to sell another and different book by that name, and thus appropriate to himself the good will and reputation of complainant's books.

VI.

SECONDARY MEANING NAMES ARE PROTECTED BY AN ABSOLUTE FORM OF INJUNCTION AGAINST A FALSE OR UNNECESSARY MANNER OF USE, AND IN OTHER CASES BY A QUALIFIED INJUNCTION REQUIRING AN ADEQUATE EXPLANATION TO ACCOMPANY THE NAME.

The degree of restraint in any particular case is always commensurate with the necessities of the situation and what commercial morality and fair business dealing may dictate. It depends upon "the exact nature of the injury and the causes that mislead the public"¹ In reconciling the rights of the parties in cases of this kind² so as to permit the defendant to make every proper and honest use of a common term, and at the same time to prevent a misuse of the term unduly and unnecessarily damaging to the prior trader, who first gave the name a value and a significance in the trade, the courts have formulated certain rules which safeguard complainant's rights and yet work no hardship to an honest defendant.³ These rules merely express and enforce the general principle expressed by the aphorism "*sic utere tuo ut alienum non lædas.*" *Singer Co. v. June, etc., Co.* 163 U. S. 169.

¹Per Thayer, J., in *Merriam v. Famous, etc., Co.*, 47 Fed. 415.

²*Rowley v. J. F. Rowley Co.* (C. C. A.), 161 Fed. 94.

³Per Lacombe, J., in *Allegretti, etc., Co. v. Keller*, 85 Fed. 643, citing *Baker v. Sanders* (C. C. A.), 80 Fed. 895.

The principal rules applied in this class of cases are:—

(a) *The name must be truthful in some sense as applied to defendant's goods; a false use will be absolutely enjoined.*

Thus personal names are not subject to exclusive appropriation *as against persons of the same name*; but as against persons not of that name (except legitimate successors by assignment), the right to use personal names which have acquired a secondary meaning is exclusive, and will be protected by an unqualified form of injunction.¹ *L. E. Waterman Pen Co. v. Modern Pen Co.*, 35 Sup Ct. Rep. 91 (No. 54 Oct. Term, 1914. Not yet officially reported); *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118; *Brown Chemical Co. v. Meyer*, 139 U. S. 540; *International Silver Co. v. W. H. Rogers Corp.*, 67 N. J. Eq. 646; *Pinet v. Maison Pinet*, 14 Rep. Pat. Cas. 933, 15 Rep. Pat. Cas. 65; *Royal Baking Powder Co. v. Royal*, (C. C. A.) 122 Fed. 337, 343, wherein Mr. Justice Lurton said:

"If the defendant did not bear the family name of 'Royal' there would not be the slightest doubt but that his use of the word 'Royal' in connection with baking powder made and sold by himself *would be absolutely prohibited* upon the ground that the use of so arbitrary and

¹"The general rule and the restrictions upon it are thus stated in *Brown Chemical Co. v. Meyer* [139 U. S. 540]. . . . An ordinary surname cannot be appropriated as a trademark by any one *as against others of the same name who are using it for a legitimate purpose*; although cases are not wanting of injunctions to restrain the use even of one's own name, where a fraud upon another is manifestly intended. . . . If such use be a reasonable, honest, and fair exercise of such right," [he is not liable for incidental damage]. *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118.

meaningless a word applied to a baking powder could only be with the dishonest intent to appropriate to himself some of the benefits resulting from the demand for the Royal Baking Powder made and sold by the complainant."

The question suggested, and left unanswered by this court in the *Waterman Pen* case, whether the protection granted in personal name cases "is limited by reason of a personal privilege, or is the measure of the plaintiff's rights as against the world," has been answered by the Circuit Court of Appeals for the Sixth Circuit as follows:

"The cases relied on by appellees upon this subject do not secure more than a personal privilege, and that only when it is exercised fairly and so as not to mislead the public."¹

Of course, the right to use personal names may be assigned in connection with the business in which they have been used, and if such assignment is *bona fide* and not a sham, the assignee will be protected in his use of the assigned name as though it were his own. *L. E. Waterman Co. v. Modern Pen Co.*, 35 Sup. Ct. Rep. 91 (not officially reported); *Donnell v. Herring-Hall-Marvin Safe Co.*, 208 U. S. 267; *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S. 554.

Likewise geographical or place names may not be exclusively appropriated as against others located at, or dealing in goods coming from, the place indicated, and therefore using it with equal truth. But such names may be exclusively appropriated as against everyone not doing business at the place designated by the name. *La Republique Francais v. Saratoga Vichy*

¹*National Distilling Co. v. Century, etc., Co.* (C. C. A.), 183 Fed. 206.

Spring Co., 191 U. S. 427, where Mr. Justice Brown stated the rule:

"Geographical names often acquire a secondary signification indicative not only of the place of manufacture or production, but of the name of the manufacturer or producer and the excellence of the thing manufactured or produced, *which enables the owner to assert an exclusive right to such name as against every one not doing business within the same geographical limits*; and even as against them, if the name be used fraudulently for the purpose of misleading buyers as to the actual origin of the thing produced, or of palming off the productions of one person as those of another."¹

¹Citing: *Elgin Nat. Watch Co. v. Illinois Watch Co.*, 179 U. S. 665; *Newman v. Alvord*, 51 N. Y. 189; *Lee v. Haley*, L. R. 5 Ch. App. 155; *Wotherspoon v. Currie*, L. R. 5 H. L. 508; *Braham v. Beachim*, L. R. 7 Ch. Div. 848; *Thompson v. Montgomery*, L. R. 41 Ch. Div. 35; *Seixo v. Provezende*, L. R. 1 Ch. App. 192.

"It is abundantly settled by authority in the Federal Courts that they will not tolerate a false use of a geographical name, when it is so used to promote unfair competition and to induce the sale of spurious goods." *Collingsplatt v. Finlayson*, 88 Fed. 693, wherein the words "Plymouth Gin" on goods not coming from Plymouth were absolutely enjoined.

See also *American Washboard Co. v. Saginaw Mfg. Co.* (C. C. A., 6th Cir.), 103 Fed. 281, where Mr. Justice Day said: "An examination of these cases shows that they are based upon the doctrine which we have already shown to be the basis of equitable interference. See *Pillsbury-Washburn Flour Mills Co. v. Eagle*, 30 C. C. A. 386, 86 Fed. 608, and cases therein cited. The doctrine is well stated in the syllabus of the case of *Gage-Downs Co. v. Featherbone Corset Co.* (C. C.), 83 Fed. 213: 'One making corset waists at Chicago, and selling them as "Chicago Waists," so that this designation has come to denote among purchasers the goods made by him, is entitled to an injunction against another who makes similar waists in a different state and city, and sells them as "Chicago Waists," with the manifest intent of availing himself of the reputation acquired by the other's goods.' " [Decision by Severens, J.]

In *Newman v. Alvord*, 51 N. Y. 189, cited in support of the above quoted rule, plaintiff's cement made at Akron had become known as "Akron Cement." Defendant called his cement, made near Syracuse, "Alvord's Onondaga Akron Cement or Water Lime, manufactured at Syracuse, N. Y." An absolute injunction against this use by defendant of the name "Akron" was granted. This case was also cited with approval by this court in *Conal Co. v. Clark*, 13 Wall. (U. S.) 311, where the court said:

"It was not in fact Akron cement (for Akron and Syracuse were a long distance from each other), and the purpose of calling it such was evidently to induce the public to believe that it was the article made by the plaintiffs. The act of the defendants was, therefore, an attempted fraud, and they were restrained from applying the word 'Akron' to their manufacture. But the case does not rule that any other manufacturer at Akron might not have called his product 'Akron Cement' or 'Akron Water Lime.'"

In distinguishing the "*Amulfin*" liquor case, this court further said (13 Wall. loc. cit. 305):—

"It does not appear from the report of the case that the juice or roots from which the defendant's article was made came from Amulfin. If not, their mark was false. Of course the Lord Chancellor enjoined them."

In *Elgin National Watch Co. v. Illinois Watch Co.*, 179 U. S. 665, the Court said:—

"Obviously to hold that appellants had obtained the exclusive right to use the name 'Elgin' would be to disregard the doctrine authorized by *Mr. Justice Strong in Conal Co. v. Clark*, as sound doctrine 'that no one can apply the name of a district of country to a well known article of commerce and obtain thereby

such an exclusive right to the application as to prevent others imitating the design or having in similar articles coming from the district *fraudulently using the same designation*.¹

"But whereas an alleged trade-mark is not in itself a good trade-mark, on the use of the mark the same is deemed the particular manifestation or symbol, relied upon in unfair competition and to be avoided by requiring the use of the mark by another to be confined to its primary sense by such limitation as will prevent misapprehension on the question of origin."²

The Supreme Court further said:

"These and the cases to and therein the proposition that words which in their primary signification give notice of a general fact, and may be used for that purpose by every one, are lawfully withdrawn from common use in the sense, but they illustrate the necessity of the protection from imitation and fraud in respect of a secondary signification afforded by the courts."³

Obviously this doctrine limits any use by others of a word with a secondary meaning to a fraudulently descriptive use as to its primary sense.

The same rule applies to the generic names of articles such as "Singer Sewing Machine,"⁴ "Mergler's Composition,"⁵ "Hochman's Pills,"⁶ "Chatterbox,"⁷ "Castoria,"⁸ "Laudanum,"⁹ "Lafley's Extract,"¹⁰ and

¹ *Singer Mfg. Co. v. Jané Mfg. Co.*, 103 U. S. 43, 44; *Singer Mfg. Co. v. Hoff*, 100 U. S. 157.

² *Mergler's Composition Co. v. Mergler's American Composition Co.*, 103 U. S. 1, 4, 10.

³ *Hochman & Hochman*, 22 U. S. 4, 20.

⁴ *Hoff v. Casner*, 100 U. S. 49, 51, 4, 20.

⁵ *Chatterbox Co. v. Webster*, 1 U. S. 4, 1; 20 U. S. 49; *Castoria Co. v. Hoffmann*, 1 U. S. 4, 1; 20 U. S. 49.

⁶ *Hoff v. Casner*, 100 U. S. 49, 51, 4, 1; 20.

⁷ *Lafley's Extract of Dates Co. v. Lafley's Extract Co.*, 1 U. S. 4, 1; 20 U. S. 49, 50.

"Bromo-Caffeine."¹ Subsequent traders may deal in these articles and use these names to designate such articles. But when they do not deal in these articles, and seek to apply these names to spurious imitations, the original proprietor is entitled to an absolute injunction against such untruthful use, which is unnecessarily injurious, fraudulent, and therefore not *damnum absque injuria*.

Book titles are protected by injunction against use or imitation as the title of other similar competitive books. A mere book title is not a trade-mark because it is the generic name of the particular book to which it has been applied. But irrespective of this fact, and irrespective of whether or not the book is copyrighted, an injunction will be granted against a use of its name as the name of a different competitive book, upon the ground of unfair competition and in order to prevent deception. "*Chatterbox Cases*," 21 Fed. 189; 27 Fed. 22; 29 Fed. 91; 31 Fed. 154; *Merriam v. Saalfield*, 198 Fed. 369; *Merriam v. Oglivie*, 149 Fed. 858; 159 Fed. 638; 170 Fed. 167; *Oxford University v. Wilmore-Andrews Pub. Co.* 101 Fed. 443; *Harper v. Holman*, 84 Fed. 224; *Social Register Assn. v. Howard*, 60 Fed. 270; *Harper v. Lare*, 103 Fed. 203; *Metzler v. Wood*, 8 Ch. Div. 606; 47 L. J. Ch. 625; *Dicks v. Yeates*, 50 L. J. Ch. 809.

Truth, and some reasonable need for an honest purpose, is the only possible justification for any use of a confusing name by a newcomer into the market. No trade pirate has ever attempted to appropriate the trade rights of another without at least some colorable and alleged truthful reason for using the terms sought to be appropriated. The only reason why geographical

¹*Keasby v. Brooklyn Chemical Works*, 142 N. Y. 467.

words or words of quality may not be exclusively appropriated is that such words are or may be aptly descriptive, and the only reason why a trespassing defendant has the right to use such words at all is because, in the primary or original sense, the word is descriptive, and he is entitled to use it in that sense. Therefore, where the defendant is using such a word, which has acquired a secondary meaning, in a truthfully descriptive sense, he may not be absolutely enjoined but may be required to accompany such use with other explanatory words sufficient to prevent deception and resulting fraud. Where, however, the defendant has no need to use the word because it is in no sense truthfully descriptive of his product, he may and will be absolutely enjoined from using it, because then his only possible purpose in using it is to commit a fraud, and he is in no way harmed, or his rights limited, by being prevented from using a false description solely with the intent and with the effect of passing his goods off as those of the complainant. The decisions are unanimous to this effect. It is illogical to first permit a defendant with fraudulent intent, and without any justification in necessity or truthful description, to do everything necessary to commit a fraud on the complainant, and then, as a condition of such permission to require him to use a sentence contradicting his fraudulent assertions, which may, or may not, be a sufficient antidote.

"The defendant had no right to do that which rendered these distinctions necessary, and which also rendered them futile." *Moxie v. Daoust* (C. C. A. 1st Cir.), 206 Fed. 434.

(b) *Where the name is truthfully descriptive of defendant's goods, in some sense of the term, it must be used only in a descriptive manner, and so as to con-*

vey such truthful sense and no more; use as the identifying title, or short or market name of the goods will be enjoined.

Obviously, where a certain word or phrase has become the short name or market title of one person's goods, the use of the same short name for the similar goods of a rival trader is necessarily deceptive.

"Unless you can defend yourself on the ground that what you are selling is the thing that acquired the name, what possible ground can you have for saying that you are not passing off your thing as his, when you are giving it the name which his goods have borne up to that date?"¹

Therefore, in regulating a defendant's use of such words, equity will not permit him to use them in such a way as to make them also the identifying title or name of his goods,² but will confine him to a descriptive man-

¹Per Lord Herschell, in the House of Lords. "*Yorkshire Relish*" case, 14 R. P. C. 720, 727.

²This rule is well stated in the *Bissell Plow* case, 121 Fed. 357, 366, where the court said: "The law has gone further than this, and prescribed a rule by which it can be determined whether what is done by the rival trader is calculated so to deceive such purchasers. That rule is that if what is done by such trader causes his goods to be known in the trade by the same name by which such other goods are already known therein, it is calculated to deceive such purchasers. . . . If, then, the use of any mark that will cause such an effect is an infringement of a technical trade-mark, it would seem to follow that, where no such trade-mark is involved, if what the second comer does in relation to his goods or business will have such an effect, it amounts to unfair competition. As in the other case, it causes his goods to be known in the market by the same name by which the first comer's goods are already known, and hence is calculated to deceive purchasers into buying his goods for that trader's goods, which is the test of unfair competition, as well of infringement of a technical trade-mark. And it has been so held." See also *N. K. Fairbank Co. v. R. W. Bell Mfg. Co.*, 77 Fed. 869.

ner of use, which will convey only the meaning he is entitled to convey and will not at the same time suggest that his goods are those of the complainant. This rule has been adopted and enforced in many cases. It applies to the use of one's own proper name,¹ to geographical names,² and to generic names.³ All of these classes of names may be used by any one in a proper manner to tell the truth about his own goods, but while the truth may be told, it must be told in a wholly truthful manner.⁴

In *Walter Baker & Co. v. Baker*, 87 Fed. 209, 210, the court said:

"So long as the title contains the words which in the trade and among consumers have come to be the every-day designation of complainant's goods, the chocolate so labeled will naturally be assumed to be complainant's, unless special care be taken to indicate that it is not."

¹*Clark Thread Co. v. Armitage* (C. C. A. 2nd Cir.), 74 Fed. 936; *affirming* 67 Fed. 896; *Walter Baker & Co. v. Baker*, 87 Fed. 209; *Walter Baker & Co. v. Sanders* (C. C. A. 2nd Cir.), 80 Fed. 889; *Walter Baker & Co. v. Slack*, 130 Fed. 514; *Bissel Plew Case*, 121 Fed. 357; *International Silver Co. v. Rogers*, 110 Fed. 958 (Roger's Silver Ware); *Reed Cushion Shoe case* (C. C. A. 2nd Cir.), 162 Fed. 887; *Meyer v. Bull*, 58 Fed. 884 ("Bull's Cough Syrup").

²*Oxford University v. Wilmore-Andrews Pub. Co.*, 101 Fed. 443 ("Oxford Bibles"); *Shaver v. Heller* (C. C. A.), 108 Fed. 821 ("American Ball blue"); *Montgomery v. Thompson* (1891), App. Cas. 217, 64 L. T. N. S. 749 ("Stone Ale"); *Wotherspoon v. Currie*, L. R. 5 H. L. 508 ("Glenfield Starch").

³*Roddaway v. Banham* [1896], App. Cas. 199 ("Camel's Hair Belting"); *Hansen v. Siegel Cooper Co.*, 106 Fed. 691 ("Junket Tablets"); *Williams v. Mitchell* (C. C. A.), 106 Fed. 163 ("Carrom Board").

⁴*Dr. A. Reed Cushion Shoe Co. v. Frew* (C. C. A. 2nd Cir.), 162 Fed. 887.

The "*Chickering Piano*" case is a notable, and the latest, application of this rule. *Chickering v. Chickering* (C. C. A. 7th Cir.), 215 Fed. 490.

If defendant's dictionary were "based upon" Webster's Unabridged Dictionary of 1847, that fact might be stated in the form in which it was stated upon the title page of the Crown Dictionary.¹ Such a manner of use could not deceive anyone as to the identity of defendant's book. But where, instead of stating "the whole truth and no less", as defendant was bound to do, defendant simply entitles its book "Webster's New Standard Dictionary", everyone is likely to be deceived. The use of such a title does not tell what defendant is entitled to tell, if the truth, but it does imply and tell an untruth in the sense in which it will be understood by practically the whole public and in which it was plainly intended by the defendant to be understood, and which furnished the motive for the change of name. The changed form of title page does not tell the fact claimed, and which was told by the Crown title page. One of the best illustrations of the proper form of decree in this class of cases is the one directed by Mr. Justice Harlan and Judge Wood in *Meyer v. Bull*, (C. C. A.) 58 Fed. 884, 886, set out below.²

¹See Exhibit "Crown Dictionary"; and see title page inserted ante facing p. 90. *Williams v. Mitchell*, 106 Fed. 168, 171.

²"That an injunction issue herein perpetually restraining the defendant, its servants and agents, and all persons in privity with it, from manufacturing and from selling, and from in any manner offering to sell, and from distributing and from in any way disposing of any remedy or preparation to which shall be applied in any form or manner, as the name and designation thereof, the words, 'Dr. B. L. Bull's Cough Syrup', or the words 'Bull's' and 'Cough Syrup', with or without other words, . . . and from in any other form or manner using any name or designation which is calculated to cause its article to be known in the market and sold under the name of complainant's article, or as

The argument that defendant has a right to use the title "Webster's New Standard Dictionary" to notify the public that its book is based upon the dictionary of Noah Webster is precisely answered by the Circuit Court of Appeals for the 8th Circuit in *Shaver v. Heller*, (C. C. A.) 108 Fed. 821, 824, where the defendant claimed the right to designate its goods "American Ball Blue" to indicate that they were made in America. The two answers given are equally applicable here: (1) An injunction against the use of the name *in the title* will not prohibit the use of the name for the purpose of telling any fact about the book, and (2) the defendant neither needs nor seeks to use the name Webster in its title for this purpose. The same answers were indicated in the "*Stone Ale*" case¹ where complainant's ale, brewed at the village of Stone, had become known as "Stone Ale". Lord Hannen said:—

"The appellant is undoubtedly entitled to brew ale at Stone, and to indicate that it was manufactured there, but there are various means of stating that fact without using the name which has now become the designation of the respondent's ale."

(c) *Adequate explanation and distinction is invariably required.*

Where defendant's use of a name may not be absolutely enjoined because its use by defendant is truth-

'Bull's Cough Syrup'. But the writ of injunction thus to be issued shall not (except as to the name or part of the name thereof, as aforesaid) prohibit the defendant from in every fair and lawful manner stating in the wrappers or labels by it used and otherwise that its article is by it manufactured and sold, and from so fairly and lawfully stating any other fact which it may elect or desire to state."

¹*Montgomery v. Thompson* (1891), App. Cas. 217.

ful and reasonably necessary, defendant must accompany his use of the name with an affirmative explanatory statement adequate clearly and unmistakably to distinguish his goods from those of the prior trader. A use of the bare name, without such explanatory statement amounts to an artifice intended and sufficient to deceive, and will, therefore, be enjoined as fraudulent. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Merriam v. Saalfeld*, 198 Fed. 369.

The courts are stringent in their requirements of plain, adequate and unmistakably distinguishing statements in this class of cases, as will appear from the following cases, containing judicially approved forms of distinguishing statements which defendants have been required by injunction to use: *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Elgin Nat'l Watch Co. v. Illinois Watch Co.*, 179 U. S. 665; *Herring-Hall-Marvin Safe Co. v. Hall Safe Co.*, 208 U. S. 554; *French Republic v. Saratoga Vichy Co.*, 191 U. S. 427; *Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co.*, (C. C. A.), 166 Fed. 26; *Dr. A. Reed Cushion Shoe Co. v. Frew*, 162 Fed. 887 (C. C. A., 2nd Circuit); *Allegetti, etc., Co. v. Keller*, 85 Fed. 643, per Lacombe, J.; *Baker v. Sanders*, 80 Fed. 889, 895, (C. C. A., 2nd Circuit).

Defendant contests the obligation of using even an explanatory suffix; the court below required none, and the form sometimes used by defendant since the institution of this suit is inadequate (see *ante* this brief, pp. 103-6). At the very least, defendant should be required to state upon the title page, cover, and in advertisements, in a reasonably conspicuous way:

"This dictionary is not in the line of the original publication of Webster's Dictionary and its successors,

but is based upon the Imperial Dictionary of John Ogilvie."

We do not admit such basis, but if the finding below is accepted, there can be no objection to this form of explanation.

Of course, it is the books themselves which must be distinguished,¹ for the general public knows only the work, relies upon its title, and does not know the specific name of its publisher. (See *ante*, p. 43 *et seq.*) Defendant's own name on the book or in advertisements is no answer to this suit. "That is an aggravation, and not a justification, for it is openly trading in the name of another upon the reputation acquired by the device of the true proprietor." *Menendez v. Holt*, 128 U. S. 514.

If the false name is enjoined, no affirmative distinctions will be necessary.

VII.

DEFENDANT HAS INFRINGED COMPLAINANT'S REGISTERED TRADE-MARKS, OF WHICH THE NAME "WEBSTER'S" IS THE DISTINCTIVE FEATURE.

It is conceded that the title of a particular book is not a valid technical trade-mark for that book, for the reason that such a title is the generic description and name of that book. This is the point decided in the early Webster Dictionary cases.² The name of an author, whether his own name or a *nom de plume*, is also not a technical trade-mark, because descriptive.

¹"It is the word 'Rogers' that is all controlling, and it is that which should be differentiated in order to effectually distinguish the goods." *International Silverware Co. v. Rogers*, 72 N. J. Eq. 933.

²*Merriam v. Holloway*, 43 Fed. 451; *Merriam v. Famous*, etc., 47 Fed. 411; *Merriam v. Texas Siftings Co.*, 49 Fed. 944.

"*Mark Twain*" case, 14 Fed. 728. But these rules do not show that "Webster's" is not now a valid trade-mark for complainant's series of dictionaries. The use which has been made of that name for over a hundred years in connection with the dictionaries has already been stated.¹ It thus appears that Webster himself gave each of his books a formal and distinctive title which was printed on the title-pages, and duly recorded under the copyright law. None of such titles were in form or substance "Webster's Dictionary", or the equivalent.² Upon the outside cover, however, he marked each of the widely different books simply "Webster's Dictionary." That did not identify or describe any particular book, but it did indicate common origin and ownership of all of them in Noah Webster. That is the function of a trade-mark, and the words were used for that purpose. "It is doubtless correct to say that a person may have a right in his own name *as a trade-mark* as against a trader or dealer of a different name." *McLean v. Fleming*, 96 U. S. 245.³ But whether or not Webster had, or could have, a technical common law trade-mark in his name, complainant's use of it since Webster's death has made it their trade-mark. While complainant's dictionaries are the development

¹See *ante*, pp. 17-26. See also the title-pages and cover inscriptions of all these books, *Rec. vol. I*, pp. 671 *et seq.*

²See title-pages, *Rec. vol. I*, pp. 671 *et seq.*; "Copyright Certificates of Webster Series," *Rec. vol. I*, pp. 721 *et seq.*

³This case has not been modified or overruled by the later cases. *Brown Chemical Co. v. Meyer*, 139 U. S. 540; *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118. "Is not a man's name as strong an instance of trademark as can be suggested?—subject only to this inconvenience, that if a Mr. Jones or a Mr. Brown relies on his name, he may find it a very inadequate security, because there may be several other manufacturers of the same name." *Ainsworth v. Walsmsley*, L. R. 1 Eq. 518, 35 L. J. Ch. 352. Cited with approval in *Brown Chemical Co. v. Meyer*, *supra*.

and outgrowth of dictionaries written many years ago by Noah Webster, he is not the author of complainant's present dictionaries, for he has been dead for seventy years. The name "Webster" in the common or short designation of complainant's books is not used or intended as a description of authorship—that is otherwise designated on each book. It is used to designate and identify complainant's dictionaries, and to indicate that they are all members of one series. As used by the complainant and its predecessors since about 1843, the name has become in fact and substance a common law trade-mark as fully as if any arbitrary word or name had been selected.

"A name, though originally the name of the first maker, may in time become a mere trade-mark, or sign of quality, and cease to denote or to be current as indicating that any particular person is the maker. In many cases a name once affixed to a manufactured article continues to be used for generations after the death of the individual who first affixed it"¹

In precisely this manner, complainant's dictionaries have become known, and are distinguished from the dictionaries of other publishers by the name "Webster." Complainant's changing series of revised editions is very much in the nature of a periodical publication. Under these circumstances the word "Webster" is a valid common law trade-mark.²

In 1890, complainant registered in the Patent Office, under the Trade-mark Act of March 3, 1881, two trade-marks for "dictionaries", and "educational

¹*Hall v. Barrows*, 4 DeG. J. & S. 150, 33 L. J. Ch. 204.

²*Social Register Assn. v. Murphy*, 128 Fed. 116; *Social Register Assn. v. Howard*, 60 Fed. 270; *Gannert v. Ruppert* (C. C. A., 2nd Circuit), 127 Fed. 962, per Coxe, J.; *Robertson v. Berry*, 50 Md. 591, 33 Am. Rep. 328.

books." These were alleged in the bill and infringement thereof was charged.¹ Certified copies of such certificates were offered in evidence, and the certificate of the Patent Office shows that they are still in full force and effect.² The essential features of the trade-marks thus registered are shown to be respectively: "The monogram composed of the letters 'N' and 'W' together with the word 'Webster's';"³ and the same monogram together with the words "Webster's International."⁴ In 1907, complainant registered eight additional trade-marks for dictionaries consisting respectively of the words: "Webster's Academic"; "Webster's Common School"; "Webster's Primary"; "Webster's High School"; "Webster's Condensed"; "Webster's Practical"; "Webster's National Pictorial", and "Webster's Countinghouse and Family." These were all registered under the "ten year clause" of the Act of February 20, 1905, § 5. These names had been long and exclusively used by complainant upon its smaller or abridged dictionaries. Certified copies of the certificates of registration were offered in evidence.⁵ It is immaterial whether or not these trade-marks would be invalid at common law as descriptive. The very purpose of the statute was to permit the registration of names and marks not amounting to valid trade-marks; if entitled to registration, they are entitled to protection as trade-marks. *Thaddeus Davids v. Davids*, 233 U. S., 461.

The statute expressly makes these certificates of registration *prima facie* evidence of the validity and

¹Bill, Rec. vol. I, pp. 55 et seq.

²Rec. vol. I, pp. 813, 817.

³Rec. vol. I, p. 820.

⁴Rec. vol. I, p. 816.

⁵Rec. vol. I, pp. 821 et seq.

ownership of said trade-marks. The convincing and uncontradicted evidence of long exclusive use, and of secondary meaning strengthens this presumption. Defendant *offered no evidence whatever to show invalidity of these registered trade-marks.* The answer *does not deny or contest the validity of these trade-marks,* but merely denies that defendant has infringed them.¹ The validity of all these registered trade-marks must, therefore, be taken as established, and the sole question in issue is as to defendant's infringement.

In complainant's registered trade-marks, the name "Webster's" is the prominent and distinctive feature. It has been demonstrated that the improper use of this name universally deceives the average purchaser, and this is the test of infringement of a registered trade-mark. Defendant's use of the name "Webster's" in the title of its dictionary (especially when without adequate distinguishing features, used in association, so as to give the antidote with the bane), infringes these registered trade-marks, and of itself entitles complainant to an injunction. *Thaddeus Davids Co. v. Davids*, 233 U. S. 461; *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169.

In the *Davids Ink* case, *supra*, it was held that by the "ten-year clause", Congress had substantially adopted to the extent there indicated, the doctrine of "secondary meaning", as enforced in unfair competition cases, and made it a statutory right, within the federal jurisdiction. Defendant's violation of complainant's right in the "secondary meaning" of the name Webster's, and its actual deception of purchasers has been shown. (See *ante* this brief, pp. 35-39.) This shows infringement of complainant's registered trade-marks.

¹Answer, vol. II, p. 962, fols. 3845-6.

The *Singer* case (163 U. S. 169) is closely analogous to this case as to the trade-mark registered in 1876 under the Act of 1876. In that case the trade-mark consisted of the word "Singer" in combination with other features. Defendant's use of the name "Singer" was the sole thing which caused the initiative infringement, and defendant had a conditional right to use the name. Nevertheless, use of that name "without a plain and unequivocal indication of the origin of manufacture", was held to constitute infringement of the specific trade-mark of the Singer Company. So in this case, defendant's use of "Webster's", without any distinguishing indication, constitutes infringement of complainant's specific trade-mark.

In the decisions below no mention is made of the trade-mark features of the bill, although the matter was duly argued in both courts below, and failure to find and enjoin infringement was assigned as error in the Circuit Court of Appeals.*

VIII.

Complainant has been guilty of no fraud, but as the copyright has since expired, complainant has no right in the name "Webster's" since prior to defendant's incorporation, or while defendant had actual notice before adopting its incorporation.

There is no element of fraud or estoppel in this case.

Defendant changed the title of its book from "Crown" Dictionary to "Webster's Dictionary" in

*Dec. vol. III, p. 2976, 3d. 2d. 2d.

July, 1868.¹ In the preceding January of the same year, the *Register* was now directed by the Circuit Court of Appeals in the First Circuit,² after that court had granted. Dickinson had actual notice of the decision when it adopted and began to use the name "Vindex" in the title of its documents,³ and he knew that Dickinson, although knowing of the decision, did not in any way comply with the requirements of that decision shown Dickinson's last letter and tract. The decision went upon its own interpretation of the law, saying that it bore the name "Vindex" and public property without restriction.⁴ The district court did not at any time notify the Masters of its proposed use of their trademark, or inquire whether they had any objection thereto, or whether or not it would violate any of their national rights, although the Dickinson knew that the Masters were the legitimate publishers of Vindex documents, and knew that they were then attempting to do everything within their power to suppress the same. (Prayer.) The Dickinson's use of the name was in no sense directed by, or made with, the approval, consent or acquiescence of complainant, and the complainant was guilty of no failure in objecting and asserting its claim. The complainant is the one who has been repeatedly and continuously infringing in the name its rights in the name "Vindex", and acting pursuant thereto against other intruders.⁵

¹See vol. 11, 12, 13, 14.

²See vol. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

³See vol. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

⁴See vol. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441,

In March, 1909, defendant's book was called to complainant's attention, and some correspondence ensued between the parties, which is spread upon the record.¹ While couched in language of business courtesy, these letters firmly notified defendant that its use of the name Webster was an infringement of complainant's rights. They refer to the pending litigation, and say that the book, under one of its many names, may be involved in one of them, but that they cannot verify that fact, which is natural, in view of its changed name, which defendant did not disclose, though the circumstances called loudly for explanation. In the final letter of April 2, 1909, the Merriams wrote:

"We shall doubtless have occasion to write you again about your book, but we shall ask nothing but what is proper and reasonable under the court decisions, and you will, of course, expect to grant no less." (*Rec. vol. II*, fols. 4271-3.)

Defendant never replied to this letter, but continued its publication in utter disregard of the "court decisions" already rendered, and to be rendered in the pending litigation. This letter was a plain notice that complainant was litigating the question, and reserved its rights against defendant pending the outcome of that litigation. Defendant so understood it,² and was thereby put on notice. It knew the law as well as complainant could know it, and continued its infringement at its peril.

¹*Rec. vol. II*, pp. 1065 to 1077.

²"I understood that there had probably been some court decisions or decision, which the Merriam Company considered in their favor, and that would bear upon the publication of Webster's dictionary by anybody." *Wright, vol. II*, p. 1086, fol. 4342.

At the time of this correspondence in 1909, complainant did not have all the information necessary to enable it to take effective action. It did not then know that defendant's dictionary was simply the old "Crown Dictionary" with the name changed to "Webster", the defendant having suppressed all identifying features, such as title, author's and publisher's name, and the original copyright notice. As Mr. Justice Swayne said in *Pence v. Langdon*, 99 U. S. 578, 581:

"There must be knowledge of facts which will enable the party to take effectual action. Nothing short of this will do."

Upon discovery of the fact that defendant's book was simply the old "Crown" Dictionary with name changed to "Webster's", defendant was immediately notified to cease using the latter name, and upon its refusal, this suit was promptly brought.¹ Judge Coxe granted a preliminary injunction, to which laches, if there had been any, would have been a defence. It was not until the parties were taking proofs for final hearing that the full enormity of defendant's fraud became apparent, and it was discovered that this so-called "Webster's Dictionary" was simply a reprint of a British book known and originally published as the "British Empire Dictionary".²

In short, it appears, without any contradiction, that defendant deliberately adopted and used the name "Webster" upon a copy of the old Crown or British dictionary, that it removed every feature from title page or cover which might show the true identity and origin of the book, that it did nothing whatever to distinguish its book from complainant's well-known

¹*Rec. vol. II*, pp. 1070, 1078.

²*Rec. vol. I*; *Mawson*, pp. 541-2; *Taber*, pp. 610, 613.

books of that name, and that all this was done with full knowledge that the complainant was claiming special rights in the word Webster and was actually litigating the question in the courts.

There is no possible element of laches or estoppel. The defendant was not misled. It had prompt notice that complainant objected to its use of the name "Webster", and although it was not itself sued until two and one-half years later, yet all this time the complainant was litigating the same or similar questions with other infringers, and defendant knew it. As has been said: "They were under no obligations to sue every one at the same time."¹

Defendant's admitted knowledge of complainant's rights and claims, and of the prior and pending litigation absolutely precludes any claim of laches or estoppel, for it shows that defendant was not misled or prejudiced by complainant's failure to sue it sooner. *Insurance Co. v. Eldredge*, 102 U. S. 545; *American Bell Tel. Co. v. Southern Tel. Co.*, 34 Fed. 795, where the remarks of Mr. Justice Brewer are peculiarly applicable to the present situation. *Edison Electric L. Co. v. Mt. Morris Electric Co.* (C. C. A. 2nd Cir.), 58 Fed. 572.

Moreover it appears that defendant's sales had been "very immaterial"² until early in the year 1911, when defendant began its grossly fraudulent newspaper campaign, which has already been described. This suit was brought only a few months after the beginning of this campaign and while it was in progress.

¹Per Lacombe, J., in *Timolat v. Franklin Boiler Works* (C. C. A. 2nd Cir.), 122 Fed. 69; *American Graphophone Co. v. National Gramophone Co.*, 90 Fed. 824; *Edison Co. v. Mt. Morris Light Co.*, 57 Fed. 642.

²*Swift, Rec. vol. II, fols. 1147; 4587.*

It is, of course, familiar law that mere delay, not accompanied by circumstances constituting an estoppel, or abandonment, is never a bar to a final injunction to stop infringement of a trade-mark, or unfair competition and in support of the legal right. *Menendez v. Holt*, 128 U. S. 514. *M'Lean v. Fleming*, 96 U. S. 245. *Saxlehner v. Eisner*, 179 U. S. 19. *French Republic v. Saratoga Vichy Co.*, 191 U. S. 439.

In the case at bar, however, there has been no delay in the assertion of complainant's rights, and there is no circumstance of laches or estoppel to bar either an injunction or an accounting.

IX.

COMPLAINANT HAS BEEN GUILTY OF NO INEQUITABLE CONDUCT; ITS HANDS ARE CLEAN.

Defendant contended below that the dismissal of the bill was right because of alleged inequitable conduct of the complainant in three respects: (a) Alleged inequitable circumstances attending the bringing of the suit; (b) the publication of Webster's New International Dictionary under that name in 1909, and (c) the continued publication and sale of Webster's Condensed Dictionary.

(A) *Circumstances under which this suit was brought.*

Defendant first charges that between 1890 and 1904 complainant brought unjustifiable suits,¹ claim-

¹*Merriam v. Holloway* (1890), 43 Fed. 450; *Merriam v. Famous, etc., Co.* (1891), 47 Fed. 411; *Merriam v. Texas Siftings Co.* (1892), 49 Fed. 944; *Merriam v. Straus* (1904), 136 Fed. 477; *Merriam v. Ogilvie* (1904), 149 Fed. 858, (C. C. A.) 159 Fed. 638, (C. C. A.) 170 Fed. 167. For completeness we add to defendant's list: *Merriam v. Saalfeld* (1911), 190 Fed. 927, 198 Fed. 369.

ing superior rights in the name Webster, and that in each one of these suits its claims were pronounced "all nonsense." As a matter of fact, the exact contrary was the result. The decision in every case, without exception, was in favor of complainant, and the decisions resulted in establishing complainant's prior and "superior" rights in the name "Webster's" as applied to dictionaries.¹ A successful suit in equity in which complainant obtained equitable relief cannot be deemed inequitable or unjustifiable. In the *Ogilvie* case, although this complainant was enjoined from *circularizing* Ogilvie's customers with a claim of exclusive right, when, as the court found, it had only a conditional or secondary meaning right, yet the court found that the Merriam claim was "*honestly made*" (170 Fed. *loc. cit.* 171), and granted to the Merriams equitable relief in that very suit by way of injunction compelling Ogilvie to respect the Merriam's "superior" rights in the name "Webster's." The full injunction so granted has been already quoted. It is not as stated by defendant and the court below.² The claim that the suit at bar is a tort has been answered in the comments on the opinion below.³

In the *Saalfeld* case (190 Fed. 927; 198 Fed. 369) the Circuit Court of Appeals for the Sixth Circuit declared in unmistakable terms the "superior rights" of the Merriams in the name Webster's, and granted both an injunction and an accounting because of violations of them.

The claim that complainant was guilty of laches or other inequitable conduct because it waited two and

¹These cases are cited, and their results given elsewhere in this brief. See *ante*, pp. 16, 17; 84; 110; 112, 113.

²See *ante*, p. 108.

³See *ante*, pp. 103-110.

one-half years, and did not sue defendant until November, 1911, is without merit (see Point VIII, *ante*, p. 142-6). Defendant had actual notice of complainant's claims, and that it was prosecuting test cases against other infringers.

(B) *Webster's New International Dictionary*.

Defendant asserted below that the use of the above title upon complainant's 1909 revision is a misrepresentation depriving complainant of any right to equitable relief upon the principle of the *Fig Syrup* case (*Warden v. California Fig Syrup Co.*, 187 U. S. 516). The contention is based upon the admission of complainant that this unabridged 1909 edition "is of almost totally different literary contents from any book with which Noah Webster had anything to do." (*Rec. vol. I*, fols. 695-702). This statement was made with reference to the growth of the dictionary, through successive revisions and editions in the course of seventy years, from the 70,000 words contained in it at Webster's death to the 400,000 words and phrases contained in this latest edition.

The claim that because the original proprietor has continuously revised, enlarged and improved this standard reference work, and continued to use its original and distinctive name, it is guilty of fraud on the public; that its hands are therefore unclean; and that equity will turn it out of court, hardly deserves serious consideration.

The court below rejected this contention, saying:

"Of course, a 'Webster' dictionary must own Webster as its father originally; and in the case at bar, although the heredity of the complainants' 1909 Webster is all that gives it its character as a Webster, yet it still has that char-

acter, remote now as the content may be." (*Rec. vol. III*, p. 2062).

Of course, an assignee or successor in a business in which a personal name has been used may continue to use that name in the business without being open to the charge of unclean hands, provided no misrepresentation is made. *L. E. Waterman Co. v. Modern Pen Co.*, 35 Sup. Ct. Rep. 91; *Kidd v. Johnson*, 100 U. S. 617; *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S. 554; *Dr. S. A. Richmond Nervine Co. v. Richmond*, 159 U. S. 293, where the court said: "The fact that such trade-mark bears Dr. Richmond's *own name and portrait* does not render it unassignable to another"; *Brown Chemical Co. v. Meyer*, 139 U. S. 540, where the court said: "There are a few cases indicating that the mere right to use a name is not assignable, notably *Chadwick v. Covell*, 151 Mass. 190, but none that it may not be assigned . . . to a successor in business as an incident to its goodwill. *Ainsworth v. Walmsley*, L. R., 1 Eq. 518."¹ "The name . . . becomes the denomination of the article itself, and is no longer a representation that the article is the manufacture of any particular person." *Hall v. Barrotes*, 4 DeG. J. & S. 154. Complainant is the direct successor of Noah Webster, claiming under contracts which expressly authorized it to make and publish new and revised editions and abridgements. Of course, it has the right to continue the use of the name on all the books of the series. Complainant has scrupulously stated, upon the title pages, and in the prefaces of the several editions, the exact facts as to authorship and editorship, the

¹See quotation from this last cited case, *ante*, p. 138 of this brief.

changes and additions which have been made, and the relation of each book to preceding books of the series.¹ Thus the title page of the book criticised by defendant reads: "Webster's New International Dictionary of the English Language. Based on The International Dictionary of 1890 and 1900, Now Completely Revised in All Departments, Including also A Dictionary of Geography and Biography, Being The Latest Authentic Quarto Edition of The Merriam Series, W. T. Harris, Ph. D., LL.D., Editor in Chief, F. Sturges Allen, General Editor," etc. On the outside cover the book is stated to be "The Latest Authentic Edition of The Merriam Series, G. & C. Merriam Co."² This is beyond all criticism. The title pages of the editions of 1890 and 1900 read: "Webster's International Dictionary of The English Language; being the authentic edition of Webster's Unabridged Dictionary Comprising the editions of 1864, 1879, and 1884, Now thoroughly revised and enlarged under the supervision of Noah Porter, D.D., LL.D., of Yale University, With a voluminous Appendix", etc. On the back this book is described as: "The Authentic Unabridged Revised and Enlarged."³ All the books of complainant have been described in like manner, and it is impossible to find just cause for criticism, or to impute unclean hands.

While complainant's book does "own Webster as its father originally", and its history and the continuity of its development justify its name, it is believed that no justification is necessary. Complain-

¹See *Title Pages of Webster Series, Rec. vol. III*, pp. 677 *et seq.*, and see the books themselves.

²*Rec. vol. I*, p. 715, and see book itself.

³*Rec. vol. I*, pp. 702 and 710, and see the books themselves.

ant has made its books famous under that name, and there is no prior user whose rights are invaded; its predecessors in title were the first and original users of the name.¹

Defendant's whole argument that the title, "Webster's New International Dictionary", is a false and deceptive title, rests upon its position that today the name "Webster's" in the title of a dictionary means only that part of the matter actually written by Noah Webster himself. The proofs abundantly established that the name "Webster's" in the title of a dictionary means, and for many years has meant, a composite literary production made by numerous lexicographers, including Noah Webster, Chauncey A. Goodrich, Noah Porter, Dr. Harris, Professor Sheldon, and others. Certainly an order given today for a Webster's Dictionary would not be properly filled if a copy of the 1828 edition was supplied.² As shown by the evidence, States and School Boards throughout the land prescribe Webster's Dictionary as the standard authority to be used in the schools or in public departments. Is it reasonable to assume that any one could fill these

¹A similar situation was recognized by Lowell, J., in *William Rogers Mfg. Co. v. Rogers & Spurr Mfg. Co.* (C. C.), 11 Fed. 495, 498, where he said: "Both parties have fallen into the mistake of supposing that it was important to have a Rogers and his son to authorize them to use the trade-mark Rogers & Son. The law is not so. Any one might use that trade-mark for the first time that it was used, and if there was no Rogers in the same business no Rogers could complain. *Levy v. Walker*, L. R. 10 Ch. D. 436; *Massam v. Thurley Co.*, L. R. 14 Ch. D. 748." And these remarks were quoted with approval in *National Distilling Co. v. Century Liquor & Cigar Co. et al.* (C. C. A., 6th Cir.), 183 Fed. 206, 208.

²*Putnam*, fols. 1566; 1573; *Wadlin*, fols. 1869; 1874; *Mead*, fols. 1893-4; 1922; 1930; *Clarke*, fols. 1940-3; *Adams*, fols. 1966-8; 1992; *Draper*, fol. 2000.

orders and contracts with photographic reprints of the obsolete 1828, or 1840, or even of the 1847 edition? Would it not be a breach of contract to attempt to do so? Would not an order today for Webster's Dictionary imply *the modern dictionary* of that name in current and public use?

The proof shows that the name Webster's Dictionary today means what Webster's Dictionary has become, not what it was seventy or more years ago, and that the popularity and demand for this dictionary arises from the excellence and high repute of editions compiled by complainant long after Webster's death. Defendant's statement, made below, that "the popularity of this dictionary arises from the belief in the mind of the ordinary purchaser that he is buying a dictionary the essential contents of which is Noah Webster's work," and "the public's desire to possess the product of that celebrated lexicographer" is contrary to the evidence, and is refuted by Judge Hand's finding below, that to describe a dictionary as "one of the original Webster's dictionaries published by Webster himself . . . would probably destroy any possibility of its sale". (*Rec. vol. III, fol. 8234.*) The testimony shows that the average purchaser relies wholly upon the reputation and authority of the complainant's current Webster's Dictionary.

Defendant claims that

"To the ordinary citizen the name of this celebrated lexicographer [Webster] in the title of a dictionary plainly describes to plain people what it plainly signifies, namely, the part of the book which the celebrated Webster wrote" (Deft.'s brief below, p. 16; see also pp. 17, 18, 19).

There is not a scintilla of evidence to show that Webster's has any such discriminative meaning to any one. "Webster's Dictionary" has been the name or title, and the generic description of many successive dictionaries. It has always been descriptive of *the book as a whole* to which it was applied. Since 1847 the name has not designated solely "that part of the book which Webster wrote", but has designated a composite production. As the book grew through successive revisions to more than five times its original size and contents the name identified and now identifies the series. In the Ogilvie case (159 Fed. 638, 642) it was held that the phrase "Webster's Dictionary" indicated the work which had been built up by the Merriams. In all the prior adjudications relief was awarded to complainant upon the theory that Webster's Dictionary meant primarily not the personal contributions of Noah Webster, but the current series published by the Merriams.

Every one of complainant's successive editions plainly stated upon its title page the exact facts as to authorship, and its relation to previous editions.¹ These facts were further elaborated in the prefaces of the several editions. There was no misrepresentation, no concealment, no ambiguity even. Each one of these editions became known in its time to the public as Webster's Dictionary. Since 1890, or for 25 years, those words when used to refer to a large or unabridged dictionary have meant "Webster's International Dictionary", compiled by complainant's editorial staff, headed by Noah Porter, and including numerous distinguished assistants. Defendant con-

¹See *Title Pages, Rec. vol. I*, pp. 677, 684, 686, 695, 697, 698, 702, 711, 715.

ceded below that this edition was properly entitled "Webster's" (Brief, p. 23). That famous "Webster" matter has been carried forward into, and forms the basis of the 1909 Webster's New International Dictionary, which is plainly described as a revision and enlargement of it. Defendant's expert, Prof. Peck, testified that complainant's dictionaries "are all properly called "Webster's Dictionary."¹ Must the publisher of a standard reference work abandon its name, and throw away its good-will, because the successive revisions, in the course of almost a century, have necessarily made the latest edition different from the first edition? Is it a fraud, for example, to publish and sell the eleventh edition of the *Encyclopædia Britannica* under that name, because it is totally different from the work of that name which was famous a hundred and thirty-two years ago? Are complainant's hands unclean because they have kept their work abreast of the times? Must an old concern abandon the trade name of its series of publications because the original authors have died?

(C) *Webster's Condensed Dictionary*.

Defendant contends that complainant's hands are unclean because of certain alleged misrepresentations in connection with its "Webster's Condensed Dictionary" made upon the book itself and in advertisements of that book.

It appears from the testimony, without dispute, that complainant owns and publishes this book and sells it to the firm of Reilly & Britton, who are booksellers, and to no one else. Reilly & Britton are the exclusive vendees of this book, and they sell it in the

¹*Rec. vol. III, fol. 6306.*

retail trade upon their own account and not as agents of the complainant.¹ The complainant had nothing whatever to do with the advertisement and sale of this dictionary by Reilly & Britton, and did not see or know of the advertisements to which defendant takes exception until called to their attention during the course of this suit.² Even if it were true that Reilly & Britton's advertisements were open to criticism, it would not affect complainant's right to relief, nor make their hands unclean. *Royal Baking Powder Co. v. Royal*, 122 Fed. 337, 345, per Lurton, J.; see also Judge Hand's opinion below (fol. 8279), where speaking of defendant Cupples & Leon Co., advertisements, he said:

"Moreover it does not certainly appear that the defendant is responsible for his customers' advertisements."

The incompetent hearsay detailed by defendant's Vice-President, Mr. Swift, is the sole evidence offered to show that Reilly & Britton and Mr. Murphy sold this book as complainant's agents, and it was specifically denied by Mr. Murphy, Mr. Britton and Mr. Washburn.³

Complainant, of course, assumes full responsibility for the book itself. It was originally compiled, published and copyrighted by complainant in the year 1884 under the title of "Webster's Condensed Dictionary". In 1906 some changes and revisions were made and a new copyright was entered to cover the new matter,

¹*Rec. vol. I: Washburn*, fols. 2537-2543; *Britton*, fols. 2363-2367; *Murphy*, fol. 2466.

²*Washburn, Rec. vol. I*, fols. 672, 2541-2549; *Britton*, fol. 2367.

³*Rec. vol. I: Murphy*, fols. 2466-2467, 2486-2487; *Britton*, fols. 2376-2379; *Washburn*, fols. 2541-2543.

and the book continued to be sold under its original title and with notices of both the 1884 and 1906 copyrights upon the back of the title-page. In 1909 further additions and changes were made in the book, including a new appendix, comprising about 126 pages of wholly new matter.¹ This edition was duly entered for copyright, and thereafter the book continued to be published under its original name of Webster's Condensed Dictionary, with its original title-page, to which was added a description of the additions made to the book, and copyright notices bearing all three dates, viz., 1884, 1906 and 1909, were printed upon the back of the title-page. All these copyrights are still in force. Complainant surely is entitled to continue to publish and sell this book under its original name, as long as there is a demand for it, and there is no possible impropriety in doing so. Defendant criticises the use of the phrase "Twentieth Century Edition" upon the 1909 edition of this book. That statement is true. It is an edition with new and revised matter first published and copyrighted in 1909. The additions and revisions were substantial, although in the main vo-

¹Mr. Washburn, complainant's secretary, testified with respect to the 1906 and 1909 editions of Webster's Condensed Dictionary as follows: "Supplemental matter has been added at the back, and in this latest book a very considerable number of corrections and additions have been made in the text" (fol. 669). These corrections and additions in the body of the book were made by cutting out matter in the plates and substituting other matter (fol. 660). Speaking of the Twentieth Century Edition, the witness said: "That book is a book that had additions that were made at the time the copyright was taken out in 1909, as I recall it. . . . Changes were made throughout the book where it was found necessary; additions and much supplemental matter was added at the back. . . . Such additions in the text were made as we then deemed necessary. . . . As we fixed it up in 1909 it is pretty well up to date." (Rec., fols. 659, 661, 662, 663, 666.)

cabulary the plates of the 1884 edition were corrected and used. It is the latest edition of that particular book. It is the twentieth century edition of the book always and still known and called Webster's Condensed Dictionary.

Defendant also criticises the use of the date "1911" in the publisher's imprint at the foot of the title-page. But as Judge Shipman said in the *Texas Siftings* case (49 Fed. 944, 946), dates in the publisher's imprint upon a book "denote the year in which a book is printed, and do not necessarily denote that it is a new edition of that year". Defendant's own witnesses have testified in this case that this is the fact, and that it is the custom in the publishing trade to indicate the date of printing the particular volume by the date in the publisher's imprint, and that this date is changed from year to year.¹ In accordance with this custom, the defendant itself has changed the date in the imprint in its dictionary from year to year. In addition, the complainant has always retained and used each of its copyright notices containing the true date when the copyright upon the book was entered so that no one could be misled or deceived. The defendant however suppressed the copyright notice of its "Crown Dictionary" when it changed the name to "Webster's Dictionary."

The advertising phrases criticised by defendant, while something for which complainant is in no way responsible, as already shown, are mere trade puffing or boastful dealer's talk and are wholly insufficient to support a defense of unclean hands in any event. *Holeproof Hosiery Co. v. Wallach Bros.* (C. C. A., 2nd Cir., 172 Fed. 859). The statements that the diction-

¹*Rec. vol. II: Pfanstichl, fols. 4077, 4083; Hesslein, fols. 4044-4046; Wright, fols. 4332-4335.*

ary contains "all the new words"; that it is a "splendid up-to-date lexicon"; that it is a "genuine Twentieth Century Webster's Dictionary"; and that it is a "genuine 1911 edition of Webster's dictionary" are true. Some of the criticisms now advanced are really puerile. The statement that the book was bound in "seal grain morocco" is true because that is the recognized trade description of the binding actually used.¹ The charge that this book was advertised as an abridgment of the "New International" published by complainant in 1909, is incorrect. There is no such proof. At most a single ambiguous advertisement was once published subject perhaps to that construction. Complainant is not connected with it, and there is no proof that it was ever repeated. Certainly complainant's good-will does not owe its value to this single inaccuracy, if it be one. It is no defense. *C. F. Simmons M. Co. v. Mansfield Drug Co.*, 93 Tenn. 84; *Johnson v. Seabury*, 71 N. J. Eq. 36. As already stated, the book itself states upon its title-page that it is based on the Unabridged Dictionary of Noah Webster, edited under the supervision of Noah Porter. This was the well known 1864 edition. The advertisements repeat this statement. Thus one of them stated in large type:

"This splendid up-to-date lexicon of the English language, publish by G. & C. Merriam & Company, is a practical abridgment of the well known unabridged, which with its successor the New International is the accepted authority on the English language, endorsed", etc. (*Rec. vol. III*, fol. 6883).

Another stated:

"It belongs to the genuine Webster family. The great Unabridged is its parent; the New

¹*Britton, Rec. vol. I*, fol. 2380.

International its uncle." (*St. Louis Republic*, Sept. 24, 1911. Deft's Ex. Book, p. 20.)

In view of the fact that both the book itself and the advertisements proclaimed that this book was originally compiled in 1884, and was based upon the Unabridged Webster of 1864, it is surely absurd to claim that it was intentionally represented as an abridgment of the New International of 1909. The statement as made is substantially true, because it is an abridgment of the "larger work," and the New International was itself based on the "Unabridged."

X.

THE USUAL ACCOUNTING SHOULD BE DIRECTED.

There being no circumstance of laches, estoppel or other inequitable conduct upon the part of complainant, it is entitled to both an injunction and an accounting of damages and profits.

The defendant in this case has sold an enormous number of its dictionaries, aggregating several hundred thousand copies. It admits profits of from \$50,000.00 to \$100,000.00. It has put out the books through newspapers under flaring and deceptive advertisements trading upon the name of "Webster's Dictionary," and filled with grossly fraudulent statements, and inuendoes. Almost certainly, ninety-nine per cent. of the purchasers of these dictionaries have bought them under a misapprehension of what they were buying. Defendant's infringement of complainant's trade-name and trade-mark was willful and deliberate, and without any justification whatever. Its book had a name of its own, and if it were intended to sell it upon its merits, there was no need to change its name and

adopt the name of complainant's books. Complainant has been enormously damaged, its sales having fallen off in localities where defendant prosecuted its newspaper campaigns to the extent of approximately fifty per cent. Defendant has reaped where complainant has sown, and should be compelled to account for its unlawful profits.

The decision upon the rehearing in the *Saalfield* case, where a precisely similar question was elaborately considered and determined, is an exact authority in favor of complainant's right to an accounting. *Merriam v. Saalfield*, 198 Fed. 369. The Circuit Court of Appeals for the Sixth Circuit there followed and applied the decision of the Circuit Court of Appeals for the Second Circuit in the case of *Florence Mfg. Co. v. Dowd*, 189 Fed. 44, and said:

"Applying the rule there recognized, it is sufficient for the purpose of the present case to say that the usual practice contemplates an accounting and that such practice should be followed and an accounting ordered, unless it is made clearly and certainly to appear that neither upon the existing record nor upon any record which complainant can make before the Master could there be any substantial recovery. If there remains any fair probability that the complainant can produce the necessary proof . . . then the complainant should have the opportunity to make and present his case."

This rule is well established, and it would be useless to multiply citations. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169.

In *Westinghouse Co. v. Wagner Elec. Co.*, 225 U. S. 604, this court explained and qualified the *Garretson* case, 111 U. S. 120, which for so long a time rendered

accountings nugatory, and the reasons for denying accountings in the past no longer exist in the same measure.

XI.

CONCLUSION.

It is submitted that the decree below should be reversed and a decree directed to be entered in conformity with settled rules of law and the preponderance of the proofs.

The complainant is entitled to a final decree on the merits enjoining the defendant, and directing an accounting of the profits made by the defendant.

The form of the decree, based upon decrees in analogous cases, should be substantially as follows:

1. Enjoining and restraining the defendant, its officers and agents and all others claiming or holding through or under them from using the name "Webster" in the title or in any short name of the Crown Dictionary or the British Empire Dictionary or any reprint or edition thereof, or in any way or manner calling or advertising such dictionary as a "Webster's Dictionary" or as a "Webster's New Standard Dictionary", or in any equivalent terms, or in any other way or form calculated to deceive members of the public into purchasing said Crown Dictionary or any revisions or editions of it under the belief that it is a Webster's Dictionary published by the complainant.

2. Or, if only a conditional and not an absolute form of injunction is granted, enjoining and restraining defendant from using the name Webster as above specified, unless accompanied with the following statement, plainly printed and prominently displayed in a

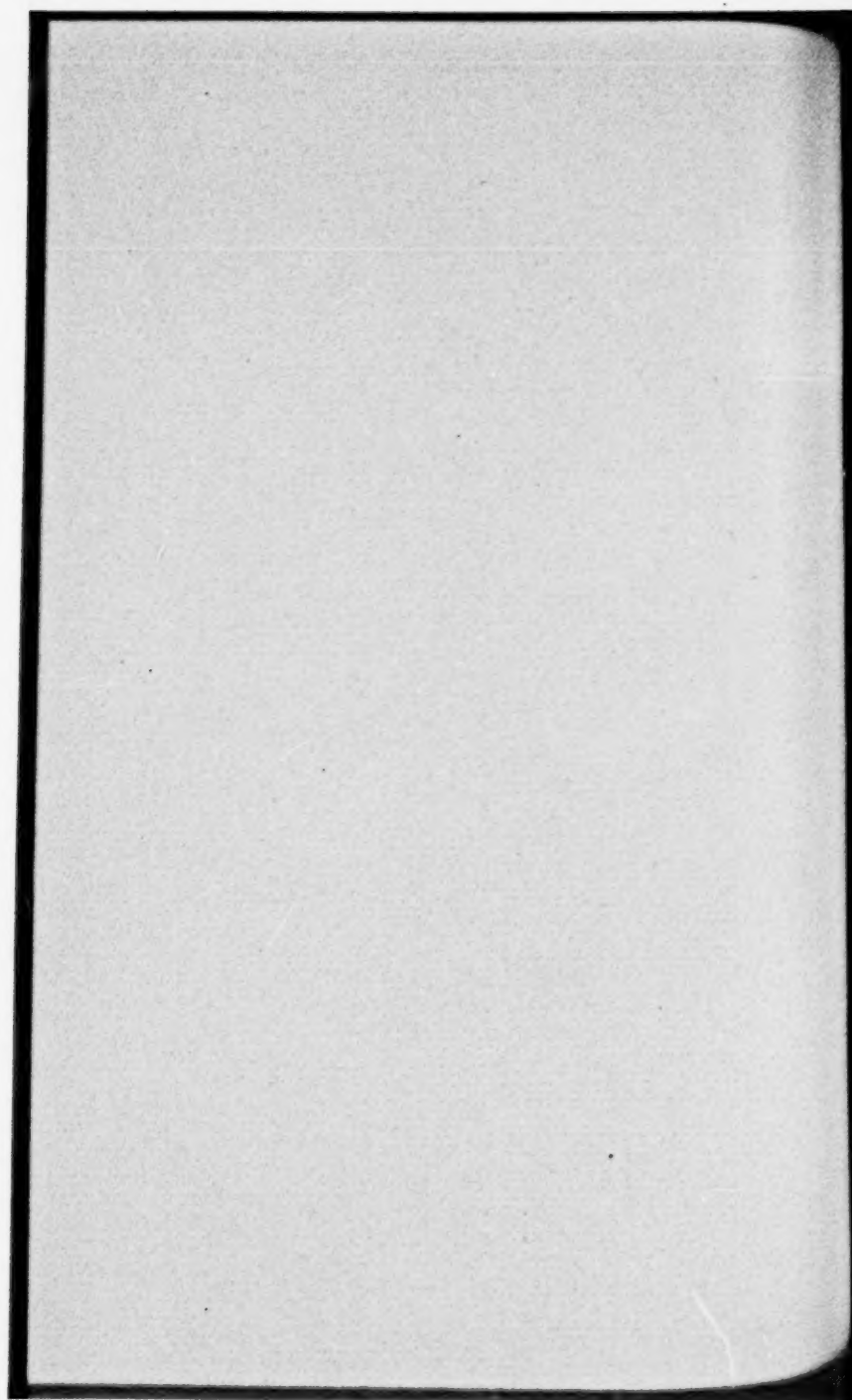
line or paragraph by itself, and in no way minimized or neutralized, upon the title page, and upon the outside front cover or back of said dictionaries, and in each circular, notice, announcement and advertisement thereof, viz:

"This dictionary is not in the line of the original publication of Webster's Dictionary and its successors, but is based upon The Imperial Dictionary of John Ogilvie."

3. Directing that the defendant account to the complainant for all and singular the profits which the defendant has made and the damages which the complainant has sustained by reason of the unlawful use by the defendant of the name "Webster" as the title or short name of the Crown Dictionary.

New York, February 1, 1915.

WILLIAM B. HALE,
Counsel for complainant-appellant.



APPENDIX.

TABLE OF CONTENTS.

I.

History and Chronological Statement of the Publication of Webster Dictionaries from 1806 to the Present Date.....	1-40
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II.

Evidence Showing Trade Significance and Secondary Meaning of Name "Webster's Dictionary," and Deception of Purchasers by Defendant.....	40-62
<i>a.</i> Purchasers Actually Deceived.....	40-53
<i>b.</i> Publishers, Booksellers and Literary Men.	53-62

III.

Evidence as to Literary Origin of Defendant's Dictionary.....	62-73
---	-------



APPELLANT'S ABSTRACT OF THE TESTIMONY.

The following is an abstract of the evidence, with references to the record, upon the principal matters of fact involved in this case. Evidence sufficiently stated in the brief proper is not here duplicated.

I.

HISTORY AND CHRONOLOGICAL STATEMENT OF THE PUBLICATION OF WEBSTER DICTIONARIES FROM 1806 TO THE PRESENT DATE.

The original series of "Webster's" dictionaries began in the year 1806, and has been continued without break by successive new and revised editions down to the present time. *Complainant and its predecessors in title have been the sole proprietors of this series of dictionaries during this entire period of more than a century.* Until after 1889, complainant and its predecessors were the sole proprietors of all dictionaries published in this country under the name of Webster; and no rival or competitive dictionaries were made or published under the name of Webster by any one during this period. After 1889, however, rival or competitive books were published by other parties, as hereafter stated, and litigation ensued, some of which is shown by the so-called "Webster Dictionary Cases."

In analyzing the evidence which conclusively establishes the above statement of fact, it will be convenient to follow the order adopted by defendant below, and divide the time into three periods: First, the period from 1806 to 1847, when the Merriams acquired their title; second, the period from 1847 to 1889; and third, the period from 1889 to date, covering the pseudo Webster publications in competition with those of complainant.

FIRST PERIOD: 1806-1847.

The following is a list of all the dictionaries having the name "Webster" either shown or claimed to have been published during this period.

- (1.) 1806. "*A Compendious Dictionary*", etc. Cover title, "*Webster's Dictionary*."

This was the first "*Webster's Dictionary*." It is a small book written by Noah Webster, and copyrighted and owned by him, and never transferred or assigned. He caused it to be printed at "*Sidney's Press*," and marketed it through "*Hudson & Goodwin, Booksellers*," and "*Increase Cooke & Co., Booksellers*." No new or revised editions appear to have been ever printed. The copyright expired in 1834. *Rec. vol. I*, p. 671, fol. 2881.

- (2.) 1807. "*Webster's Common School Dictionary*."

This was a small dictionary, compiled, copyrighted and owned by Noah Webster. It was printed at "*Sidney's Press*" and marketed through J. & D. West, whose name appears in the imprint. The copyright was never assigned and expired in 1835, and apparently the book was never reprinted. Two different books under the same title were compiled and issued by the Merriams in 1867 and 1892. *Rec. vol. I*, p. 722, fol. 2885; *vol. III*, p. 1786, fol. 7145.

- (3.) 1828. "*An American Dictionary*", etc. Cover title, "*Webster's Dictionary*".

This was the first edition of the famous "*Webster's Unabridged Dictionary*". It was wholly compiled by Noah Webster who copyrighted it in his own name for his own benefit, and remained its proprietor until his death in 1843. After his death, this copyright, and the renewal thereof, were assigned to, and vested in, G. & C. Merriam, complainant's predecessor. The renewed copyright expired in 1870. *Rec. vol. I*, p. 672, fol. 2685; p. 722, fol. 2888; p. 738, fol. 3129, *et seq.*; p. 809, fol. 3233; p. 810, fol. 3237, *et seq.* See also *preface to Webster's International Dictionary* filed as an exhibit.

Webster printed and marketed this edition of his unabridged dictionary through "*S. Converse*", whose name is in the imprint, but remained himself the sole proprietor thereof.

(4.) 1828. *Cover title, "Webster's Dictionary".*

This was a small dictionary abridged from the "Unabridged Dictionary" described in (3), and prepared, "For the use of Primary Schools and the Countinghouse." It was prepared by Noah Webster himself who copyrighted it in his own name and remained at all times its proprietor. After his death, this copyright was renewed by Webster's heirs, who transferred their rights to the Merriams, and the copyright finally expired in 1870. Webster first printed and marketed this book through White, Gallaher & White, (*Rec. vol. III, fol. 7136-7*); then through N. & J. White (*Rec. vol. I, fol. 2694*). In 1842 this same book was being marketed by Webster through Huntington & Company, (*Rec. vol. III, fol. 7130*). The Webster copyrights and proprietorship, together with the Huntington publishing rights in this book, were transferred to complainant's predecessors, G. & C. Merriam, together with those of all the other "Huntington Abridgments", in or about the year 1854, as hereafter stated under (7) and (8).

(5.) 1829. *"An American Dictionary", etc. Cover title, "Webster's Dictionary".*

This was a small dictionary abridged from the Unabridged Dictionary described in (3). It was usually termed the "Octavo Abridgment". As stated in the preface, the work of abridgment was performed by J. E. Worcester under Webster's direction. It was copyrighted jointly by Webster and Worcester. Webster was the proprietor of the work, of the basic copyright, and of the copyright of later editions. An early edition of the book was marketed through N. & J. White in 1838, and through White & Sheffield in 1839. (*Rec. pp. 673; 1783*). In 1841 a new edition, copyrighted by Noah Webster, was marketed through Harper and Bro., and also perhaps through White & Sheffield. (*See Rec. vol. I, fol. 3142*). In 1847, after Webster's death, another new edition was prepared and copyrighted by Chauncey Goodrich, Webster's son-

in-law, for the benefit of Webster's estate. This edition also was handled through Harper Bro. (*Rec. vol. I*, fol. 3142). In 1857, the original copyright was renewed by Webster's children, who granted a license under the renewal copyright to J. B. Lippincott & Co. In 1858 G. & C. Merriam, complainant's predecessor, bought from Lippincott the latter's license contract. In 1860 G. & C. Merriam prepared and copyrighted a new edition of this book, and published it under a royalty contract through J. B. Lippincott & Co. *Rec. vol. I*, pp. 673; 685; 783; 795; 809; *Rec. vol. III*, p. 1783; fol. 7132. See three editions of book with copyright dates, 1829, 1841, 1860.

This book, therefore, in all its editions, has been continuously the property of Noah Webster, then of Webster's executors and children, and then of G. & C. Merriam, complainant's predecessor. The numerous so called "publishers", including White, White & Sheffield, Harper, and Lippincott, merely printed and marketed the book under royalty contracts with its proprietor. These publishing houses did not make new and revised editions. They simply printed and sold the precise book licensed to them by the proprietor, paying a royalty in the usual way. Complainant has succeeded by lawful transfer to whatever rights they had, as well as to the rights of the original proprietor, and since 1858 the book has never been published except under a Merriam license and for the benefit of the Merriams.

(6.) 1830. "*Webster's Primary School and Counting House Dictionary.*"

A book of this title and date was referred to by defendant below, but not produced (*Rec. vol. III*, fols. 7136, 7137). It is evidently the same book described above in (4), and was prepared by and belonged to Noah Webster as proprietor. The sole evidence offered is a library card cataloguing a book under the above title, and naming White, Gallaher & White as publishers of it in 1831. No Webster dictionary was copyrighted under the above

date, which is evidently the mere imprint date. The book was assigned to G. & C. Merriam as stated above in (4).

- (7.) 1833. "*Dictionary for Primary Schools.*" Cover title, "*Webster's Dictionary*".

This was a small book, compiled, copyrighted and owned by Noah Webster, who published it through his licensee, F. J. Huntington & Co. Webster remained proprietor until his death. This book, together with all the other "Huntington Abridgments", was expressly transferred and assigned to G. & C. Merriam by contracts dated respectively 1853 and 1855, which recite that the rights of Huntington had been re-acquired by the Webster heirs. *Rec. vol. I*, p. 675, fol. 1697; "*Webster Contract of 1853*", *Rec. vol. I*, p. 783, *et seq.*, fols. 3129-3176. "*Contract between Heirs and G. & C. Merriam as to Abridged Dictionaries*", *Rec. vol. I*, p. 810, *et seq.*, fols. 3237-3246. This book went out of publication many years ago. Several wholly new abridgments of later editions of the Unabridged Dictionary have been successively prepared by complainant and substituted therefor under the same name and are listed hereafter.

- (8.) 1837 to 1854. "*Webster's Academic Dictionary*"; "*Webster's High School Dictionary*"; "*Webster's University Dictionary*"; "*Webster's Pocket Dictionary*".

No copies of the above dictionaries published between the dates specified have been offered in evidence by either party,—doubtless because none are now in existence or can be found. Complainant offered in evidence, however, certain contracts and assignments by which F. J. Huntington, or F. J. Huntington & Co., or Huntington & Savage, were licensed to publish upon a royalty basis books of the above names belonging to Webster and abridged from Webster's large dictionary. These books all belonged to Noah Webster, or his estate and heirs, who made the books, owned the copyrights and granted the

licenses. These were licenses to publish specific books, — not to make new ones. Every one of these contracts was, with the consent of the Webster interests, specifically assigned to G. & C. Merriam on April 12, 1854. *Rec. vol. I*, pp. 797; 801; 805; fols. 3185-3232.

In addition, these books were affected by the renewal copyright of 1856 upon the large Webster Dictionary of 1828, from which they were abridged. This renewal copyright was sold and assigned to G. & C. Merriam by Webster's children in whom the right of renewal was vested, by the contract of 1853. *Rec. vol. I*, 783, fol. 3129, *et seq.* This was confirmed by the contract of 1855, which contract recites that all rights in the "Huntington Abridgments" had been re-acquired, and specifically confers all rights therein upon G. & C. Merriam. *Rec. vol. I*, p. 810.

These early books of the above titles were supplanted and other abridgments from later editions were substituted therefor under the same names. These later books were published and copyrighted by the Merriams. This has occurred twice, one in the '60s, when the 1864 edition of Webster's Unabridged Dictionary was thus abridged, and again in the '90s, when Webster's International Dictionary was thus abridged. This right to make and substitute new abridgments was expressly granted to the Merriams by the Webster contract (*Rec. vol. I*, fol. 3138).

(9.) 1839. "*Webster's Primary Dictionary.*"

Defendant claimed below that a book of this name was published by White & Sheffield. The book itself was not produced, and the record does not support defendant's claim. The book referred to by the library card in the record at the page indicated (fol. 7132) is the "Octavo Abridgment" of 1829, described above in (5). This book was prepared and owned by Webster and subsequently assigned to G. & C. Merriam.

Webster's primary Dictionary was never issued through White & Sheffield, but was issued through the Huntingtons until it was assigned to the Merriams, as shown above

under (7) and (8). The record shows that in 1839, when defendant claims Webster's Primary Dictionary was being published by White & Sheffield, it was in fact being published by Huntington (*Rec. vol. I*, p. 675).

- (10.) 1840. "*An American Dictionary.*" Cover title, "*Webster's Dictionary*".

This was the second edition of Webster's large or unabridged dictionary, and the last published in his lifetime, or with which he directly had anything to do. It was prepared by Noah Webster himself, and copyrighted and owned by him until his death in the year 1843. Noah Porter of Yale, who revised and edited the 1864 and 1890 editions of this book, says in the preface to the 1890 edition :

"The second edition, 1840, somewhat enlarged and revised by the author, was published by Dr. Webster himself in two volumes, royal octavo; to which a supplement was added in 1843."

The edition with the supplement was published by Webster through J. S. & C. Adams. After Webster's death in 1843, the copyright upon Webster's Unabridged Dictionary was conveyed and assigned to G. & C. Merriam by Webster's executors and heirs. *Rec. vol. I*, p. 676, fol. 2701; p. 725, fol. 2897; p. 793, fol. 2169. This transaction was stated by Noah Porter in his preface to the 1890 edition as follows :

"After the death of Dr. Webster in 1843, the unsold remainder of this edition and the copyright of the work were purchased by George and Charles Merriam, who immediately took measures to prepare and issue a new and revised edition in a single volume in small quarto."

This purchase terminated the connection of J. S. & C. Adams with the work.

- (11.) 1841. "*An American Dictionary.*" Cover title, "*Webster's Dictionary.*"

This was a new edition of the "Octavo Abridgment", the facts and history of which are stated *supra*, under (5).

SUMMARY OF FIRST PERIOD: 1806-1847.

From 1806 to 1847 every dictionary bearing the name Webster came from one common source, had one responsible supervision and authorship, and all were united in one common proprietorship—that of Noah Webster and his heirs and this fact was indicated to the public by the common use of the name Webster upon all these books, which thus became a trade name. The proprietorship of all these books was transferred to G. & C. Merriam by contracts and assignments. *Rec. vol. I*, pp. 783-812; except only the two small books of 1806 and 1807, which died and were forgotten about a century ago.

SECOND PERIOD: 1847-1889.

From 1847 to 1889 the Merriams, and their predecessors in title, compiled and published every dictionary issued under the name of Webster.

Defendant's claim is that during this period fifteen publishers, other than the Merriams, published and sold Webster dictionaries, viz.: (1), Harper & Bros.; (2), White & Sheffield; (3), J. S. & C. Adams; (4), F. J. Huntington & Co.; (5), F. J. Huntington; (6), Huntington & Savage; (7), Mason Bros.; (8), J. B. Lippincott & Co.; (9), Ivison, Blake-man, Taylor & Co.; (10), American Book Company; (11), J. Duffy's Sons & Co.; (12), World Publishing Co.; (13), Ivison, Phinney & Co.; (14), Hurst & Co.; (15), Ward Locke & Co.

The facts are: Eleven out of these fifteen alleged publishers published under the copyrights and licenses of the Merriams and their predecessors, who prepared and owned the books as proprietors. It was the ordinary case of a jobber or retailer using the trade-name or mark of the proprietor upon the genuine goods of such proprietor.

Moreover, there were not fifteen distinct firms, nor fifteen distinct publications issued by them. Several of them are obviously mere successors of each other, continuing the same publications. Thus: (1), F. J. Huntington & Co., and

Huntington & Savage, were the same concern in which F. J. Huntington was merely a partner. (2), So also Ivison, Blakeman & Taylor, and Ivison, Phinney, Blakeman & Co., and the American Book Co. were successors of each other, and handled the same books under the Merriam license and contract. (3), White & Sheffield, Harper & Bro. and J. B. Lippincott & Co., were successive licensees of Webster's "Octavo Abridgment". Adams issued no book during this period. Thus the claimed list of fifteen (15) publishers of "Webster" dictionaries other than the Merriams melts to only seven, of whom three (3) sold only Merriam books. This leaves only four (4) *alleged* outside, or competitive publishers, instead of the fifteen claimed by defendant. As to these four alleged competitive publishers, no books issued by them during this period have been produced, and there is no substantial evidence in regard to them.

The following tabulation includes every dictionary using the name "Webster" shown or claimed to have been published during this period, with a statement of the evidence in regard thereto.

(1.) 1847. "*An American Dictionary.*" Cover title "*Webster's Dictionary*".

This was the third revision and edition of Webster's Unabridged Dictionary. It was prepared by and for G. & C. Merriam, who had purchased the copyright of Webster's Unabridged Dictionary, and was published and copyrighted by and in the name of G. & C. Merriam, who remained its proprietors until the copyright expired in 1889. *Rec. vol. I*, p. 677; pp. 726, 727. See also *preface to Webster's International Dictionary of 1890*. The purchase of this work is recited in the Webster Contract of 1853. *Rec. vol. I*, p. 783, and *especially* p. 793, fols. 3169; 3170. From this time on until after 1889, the Merriams published every unabridged Webster's Dictionary, and the contrary is not even claimed.

This 1847 edition was the first Webster's Dictionary

published and copyrighted in the Merriam name. It was the first Webster's Dictionary not compiled by or under the supervision of Webster himself, or his executors and heirs as Webster's successors. It was compiled and published by the Merriams as the authorized successors and assignees of the original publisher and proprietor of Webster's Unabridged Dictionary.

(2.) *1847 to 1853-4.*

The Webster contract of 1853 shows by recital that the "Octavo Abridgment" of Webster's Dictionary, copyrighted in 1829, and 1841, continued to be published under the Webster copyrights and licenses by Messrs. Harper & Bros. who evidently had succeeded White & Sheffield in handling it. *Rec. vol. I*, fol. 3142. The copyrights covering this book passed to the Merriams under the Webster contracts of 1853 and 1855, subject to the outstanding publishing license. This is the same book, the publishing rights to which the Merriams purchased from J. B. Lippincott & Co. in 1858, to whom the publication had been evidently transferred from the Harpers. The Merriams copyrighted in their own name a new edition of it in 1860, which is the last copyright thereon. The full history of this book has already been given.

It thus appears that this book has always, both before and since 1847, been published and owned by complainant or its predecessors in title. Before 1858 it was published under a Webster's license; after 1858 it was published under a Merriam license. Whatever rights ever existed in it long since passed to the Merriams by lawful transfer. Defendant's contention that Harper continued to publish this book until 1889 (Brief below, p. 180) is utterly baseless. Defendant's statement that "no other publisher except the Harpers is shown to have ever published this edition so that presumably they continued to publish during the copyright period or until 1889" is incorrect. The Lippincott's are shown to have published this book and to have sold their rights to the Merriams, and the Merriams are

shown to have copyrighted an edition of it in 1860, as above stated. No recent copy of the book was produced. The Harper house is still in business in this city, and defendant would have called upon it for proof if any such publication could have been shown.

(3.) 1847-1854.

Until 1854 the "Huntington Abridgments" consisting of "Webster's Academic Dictionary", "Webster's High School Dictionary", "Webster's University Dictionary", and "Webster's Pocket Dictionary", continued to be published under prior Webster copyrights and licenses. These contracts and licenses were specifically assigned and transferred to G. & C. Merriam with the consent of Webster's executors on April 12, 1854, and the Webster Contract of 1855, relating to abridged dictionaries, specifically recites that all rights in these abridgments had been previously re-acquired. *Rec. vol. I*, pp. 797-808; 810. It is thus seen that prior to 1854 these abridged dictionaries were published by complainant's predecessors in title, all rights of every description having been vested in G. & C. Merriam by contract and assignment. Thereafter, these books have been published only under a Merriam license.

(4.) 1856. "*Webster's Academic Dictionary*".

This book was copyrighted by G. & C. Merriam, and a copyright notice in their name dated 1856 appears upon the book. It was a revised edition of a previous book of the same name, copyrighted by Webster's executors in 1850, which from the identity of the name, appears to have been one of the "Huntington Abridgments" assigned to the Merriams in 1854. The Merriams published this book through Mason Brothers, whose name appears in the imprint. The Merriams were the proprietors of the book, as shown by the copyright notice and certificate. *Rec. vol. I*, pp. 678; 733; 736.

- (5.) 1856. "*A Primary School Pronouncing Dictionary.*" Cover title, "*Webster's School Dictionary*".

This book was a revision of Webster's Primary Dictionary of 1833, previously described. It passed to the Merriams under the Webster contracts. It was revised by Webster's son, as stated in its title page and in its preface, and copyrighted by Webster's executors in 1848. A new edition of it was copyrighted in 1856 by G. & C. Merriam, who thereafter published it through Mason Bros., whose name appears in the imprint. The Merriams were the proprietors of the book, as shown by its copyright notice and certificate. *Rec. vol. I*, pp. 681; 724; 737.

- (6.) 1856. "*A High School Dictionary.*" Cover title, "*Webster's High School Dictionary*".

This book was copyrighted by G. & C. Merriam in 1856, and published through Mason Brothers. It was a new edition of one of the "Huntington Abridgments" of the same name, assigned to the Merriams, as already stated, and which was originally published and copyrighted by Webster's executors in 1848. *Rec. vol. I*, pp. 680; 732; 734.

- (7.) 1856. "*An Explanatory and Pronouncing Dictionary.*" Cover title, "*Webster's Counting House and Family Dictionary*".

Copyrighted by G. & C. Merriam and published through Mason Brothers, with both the Mason and Merriam name in the publisher's imprint, and with a Merriam copyright notice. *Rec. vol. I*, p. 679.

- (8.) 1857. "*A High School Pronouncing Dictionary.*" (*Revised Edition.*) Cover title, "*Webster's High School Dictionary.*"

Copyrighted by G. & C. Merriam in 1857 and published through Mason Brothers, with both the Mason and Merriam name in the imprint, and with a Merriam copyright notice. *Rec. vol. I*, p. 683.

- (9.) 1858. "*Webster's Royal Octavo Dictionary*"; "*Webster's New University Dictionary*"; "*Webster's Pronouncing Dictionary*"; "*Webster's Primary School Dictionary*"; "*An Abridgment of the Quarto Edition of Webster's Dictionary*".

Defendant contended below that J. B. Lippincott & Company "published" the above named or described dictionaries, and that, therefore, complainant and its predecessors were not the *sole* publishers of Webster's Dictionaries during this period. Thus defendant said (Brief below, p. 183):

"The period of the Lippincott's use of the name 'Webster' extensively certainly covers twenty years, and, if the last two books above mentioned continued to be published as aforesaid, covers thirty-three years, of the period of forty-two years during which Judge Colt found that the complainant was the sole publisher using that name. The Lippincott's right to use the name 'Webster' as the title of a dictionary published by them was, during twenty years or more, expressly recognized by the complainant".

This is absolutely incorrect, and contrary to the uncontroverted facts shown by the record.

"Webster's Royal Octavo Dictionary" is the book known as the "Octavo Abridgment" which was first copyrighted by Webster in 1829; revised and again copyrighted by Webster in 1841, and the original copyright of which was renewed by Webster's children in 1857. The History of this book has already been given. (See *First Period*, No. (5), *supra*. See also *copies of three Editions of this Book*.)

Lippincotts' rights in this book were specifically assigned to G. & C. Merriam by the Lippincotts in 1858, and the contract and assignment appears in full in the record. (*Rec. vol. I*, pp. 795, 796.) The recitals in this contract show that the Webster heirs were the proprietors of this book under the renewal copyright, and that as such proprietors they had granted the Lippincotts an exclusive license to publish this book for the term of such renewal

copyrights, viz. : fourteen years from 1857, (*i. e.* until 1871) upon a royalty basis. The Lippincotts by this contract assigned all their rights to G. & C. Merriam, together with the stereotype plates of the book, the Merriams assuming the royalty payments to the Webster heirs and paying to the Lippincotts \$50,000 in addition. The Merriams then, in turn, licensed the Lippincotts to continue this publication until 1871 upon a royalty of 75c per copy to be paid by the Lippincotts to the Merriams for every copy sold. *Rec. vol. I*, p. 795.

1860 the Merriams copyrighted a new edition of this book and continued to publish it and sell it through the Lippincotts until 1876.

These books so sold by the Lippincotts under the Merriam license bear notices of the Merriam and Webster copyrights (*Rec. vol. I*, p. 685). All this was in the record before Judge Colt in the Ogilvie case. As a matter of fact, the copy of this contract offered and received in evidence was a printed copy cut from the Ogilvie record. These facts support Judge Colt's finding that complainant (including its predecessors in title) was the sole publisher of Webster dictionaries during this period. The Lippincotts neither compiled nor ever revised or copyrighted either this book or any other Webster Dictionary. Webster and his heirs were the proprietors of this book, until it was transferred to the Merriams. The Lippincotts also may be considered one of complainant's predecessors in its chain of title. This book was not an outside or competitive book. It came from the common source of all previous Webster Dictionaries, and passed to the Merriams by lawful transfer during the life of its copyright. It was no exception to the rule that the name "Webster" upon a dictionary indicated one common source, one responsible supervision and one common proprietorship during the whole of this period.

"Webster's New University Dictionary", and the so-called "Webster's Pronouncing Dictionary" were not produced in evidence and cannot be definitely identified. The

"New University" was simply referred to in the Lippincott contract of 1858, and was assigned to the Merriams along with the "Octavo Abridgment", so that what is said above as to that book applies also to the "New University". The name "New University" was not a copyright or formal title of a book, but seems to have been merely a familiar name used at that time to designate one of the Webster's abridgments. (See *Rec. vol. I*, p. 785, fol. 3139. "The University Abridgment so-called"). This book is probably the same book which defendant referred to above as "Webster's Pronouncing Dictionary". No use of this latter title is shown anywhere in the record. The library card to which defendant refers (*Rec. vol. III*, p. 1780) merely refers to "A Pronouncing and Defining Dictionary of the English Language Abridged from Webster's American Dictionary", etc. In every probability this was the book assigned in 1858 by the Lippincotts to Merriam under the designation of "The New University".

"Webster's Primary School Dictionary", and "An Abridgment of the Quarto Edition";—Defendant stated below in its brief (p. 183):—

"The Lippincotts also began to publish in 1867 an abridgment of the quarto edition of Webster's Dictionary, and in 1868 a Webster's Primary School Dictionary, the rights of which do not appear to have ever been assigned, and which, therefore, presumably continued during the copyright period, viz., till 1909 and 1910."

This statement is wholly incorrect, and there is not anything in the record which supports it. No evidence from Lippincotts was offered. No copy of such books was produced.

The facts are that the so-called "Abridgment of the Quarto Edition of Webster's Dictionary", which defendant said the Lippincotts were publishing in 1867, and which is referred to in the record (*vol. III*, fol. 7121) is the "Octavo Abridgment" above described, and which was assigned to the Merriams. Lippincott was selling it under a Merriam license, and paying royalties to the Merriams.

The title page of the book referred to by the defendant is the same title page that appears in the several editions of this book and fully identifies it. (See also *Title Page printed in Rec. vol. I, p. 685.*)

The Webster's Primary School Dictionary, which defendant says Lippincott began to publish in 1868, was the book published and copyrighted by that name by G. & C. Merriam in the year 1867. The Merriams published this book with their own and several other names in the imprint, to wit, Ivison Blakeman Taylor & Co., J. P. Lippincott & Co., Wilson Hinkle & Co., and G. & C. Merriam. *Rec. vol. I, p. 687; vol. III, p. 1781, fol. 7183.*

This book was, as its title shows, abridged from the Merriam's 1864 revision of Webster's Unabridged Dictionary. The Merriams were the proprietors and publishers of it. Lippincott was a mere licensed distributor of it. Later the Merriams handled this book through the American Book Company, still remaining themselves the proprietors and publishers of it. *Rec. vol. I, p. 704.*

(10.) 1859. "*An American Dictionary.*" Cover title, "*Webster's Dictionary Unabridged*".

This was a republication of the Merriam's previous edition of 1847, with added supplemental matter and pictorial illustrations. It was published by the Merriams with their name in the imprint, and was copyrighted by G. & C. Merriam. It contained notices of copyright by Noah Webster dated 1840; by G. & C. Merriam, dated 1847; by Webster's children, dated 1856, which was the renewal copyright sold and assigned to the Merriams; and by G. & C. Merriam, dated 1859. *Rec. vol. I, p. 684.*

(11.) 1863. "*The Army & Navy Pocket Dictionary.*" Cover title, "*Webster's Army & Navy Dictionary*".

This book was published and copyrighted by G. & C. Merriam in 1863, and revised editions of it were published

and copyrighted by G. & C. Merriam in 1864, and again in 1867. The 1867 edition bore the following names in the publisher's imprint: Ivison Phinney Blakeman & Co.; J. B. Lippincott & Co.; Sargent Wilson & Hinkle; S. C. Griggs & Co.; G. & C. Merriam. The book bore three copyright notices in the Merriam name, dated 1863, 1864 and 1867, and the Merriams were its proprietors. *Rev. vol. I, pp. 689, 738.*

(12.) 1864. "*An American Dictionary.*" *Cover title, "Webster's Dictionary Unabridged."*

This was the fourth revised edition of Webster's Unabridged Dictionary. It was the famous "Webster's Unabridged" so widely and favorably known from 1864 to 1890, when it was succeeded by Webster's International Dictionary. It was revised and prepared by and under the direction of G. & C. Merriam, the work being done for them by Chauncy A. Goodrich and Noah Porter, both of Yale. It was published by the Merriams with their name in the imprint and was copyrighted by them. It contained notices of copyright as follows: Three notices of copyrights by G. & C. Merriam, dated respectively 1864, 1865 and 1867; a notice of copyright by Webster's children dated 1856, which was the renewal of the 1828 copyright; also a notice of copyright by Noah Webster dated 1840. The Merriams were at all times proprietors of this book. *Rev. vol. I, pp. 686; 738.*

(13.) 1867. "*A Primary School Dictionary.*" *Cover title, "Webster's Primary Dictionary."*

This book was published and copyrighted by G. & C. Merriam in 1867. It was abridged from the Merriam's 1864 edition of Webster's Unabridged Dictionary. It was sold with the following names in the imprint:—Ivison, Blakeman Taylor & Co.; J. B. Lippincott & Co.; Wilson, Hinkle & Co.; G. & C. Merriam. The Merriams were the proprietors, and the other concerns named were merely licensed distributors of it. *Rev. vol. I, pp. 687, 745.*

- (14.) 1867. *Academic Edition.* "*A Dictionary of the English Language.*" Cover title, "*Webster's Academic Dictionary*".

The book was abridged from the Merriam's 1864 edition of Webster's Unabridged Dictionary, and was published and copyrighted by the Merriam's in 1867, with notice of the Merriam copyright, and with names of both the American Book Company and G. & C. Merriam & Co. in the imprint. *Rec. vol. I*, pp. 688, 742.

- (15.) 1867. "*A Common School Dictionary.*" Cover title, "*Webster's Common School Dictionary*".

This book was abridged from the Merriam's 1864 edition of Webster's Unabridged Dictionary, and was copyrighted and owned by G. & C. Merriam. *Rec. vol. I*, p. 745.

- (16.) 1867. Cover title, "*Webster's People's Dictionary*".

This book was revised and abridged from the Merriams Webster's Unabridged Dictionary of 1864, and was published, copyrighted and owned by the Merriams with the Merriam name in the publisher's imprint and in the copyright notice. *Rec. vol. I*, p. 690.

- (17.) 1867. "*Counting House Edition.*" Cover title, "*Webster's New Counting House and Family Dictionary*".

This was abridged from the Merriam's Webster's Unabridged Dictionary of 1864, and was copyrighted by the Merriams and published by them, with the names of Ivison, Blakeman, Taylor & Co.; G. & C. Merriam and Van Antwerp Bragg & Co. in the imprint. It was prepared and owned by the Merriams. *Rec. vol. I*, pp. 691, 741.

- (18.) 1868. "*A High School Dictionary.*" Cover title, "*Webster's High School Dictionary. Revised Edition*".

This was abridged from the Merriam's Webster's Unabridged Dictionary and was published and copyrighted by the Merriams, with the names of Ivison, Blakeman, Taylor & Co., G. & C. Merriam, and Van Antwerp Bragg & Co. in the imprint. It was a Merriam book. *Rec. vol. I*, pp. 692, 742.

- (19.) 1869. "*A Pocket Dictionary.*" Cover title, "*Webster's Pocket Dictionary*".

Abridged from Webster's Unabridged Dictionary. Published and copyrighted by G. & C. Merriam, and issued with the names of Ivison, Blakeman, Taylor & Co. and G. & C. Merriam in the imprint. Always a Merriam book. *Rec. vol. I*, pp. 693, 743.

- (20.) 1877. "*Webster's Handy Dictionary.*" Cover title, "*Webster's Handy Dictionary*".

Abridged by the Merriams from their 1864 edition of Webster's Unabridged Dictionary. Copyrighted and owned by G. & C. Merriam. Published by G. & C. Merriam with the names American Book Co. and G. & C. Merriam in the imprint. Always a Merriam book. *Rec. vol. I*, pp. 694, 747.

- (21.) 1879. "*An American Dictionary. New Edition with Supplement.*" Cover title, "*Webster's Unabridged Dictionary*".

This was a republication of the Merriam 1864 edition with an appendix and supplement. It was published and copyrighted by G. & C. Merriam, and bore the Merriam name in the imprint, and notice of the Merriam copyrights dated respectively, 1879, 1875, 1864, 1859, 1847, and of the renewal copyright by Webster's children dated 1856, which had been transferred to the Merriams. Always a Merriam book. *Rec. vol. I*, pp. 695; 748, 749.

- (22.) 1884. "*An American Dictionary. Subscription Edition with Historical Supplement.*" Cover title, "*Webster's Unabridged Dictionary.*"

A new edition, with supplementary matter, of the Merriam's 1864 edition of Webster's Unabridged Dictionary. It was published and copyrighted by the Merriams, with notice of Merriam copyrights dated 1884, 1882, 1879, 1875, 1864, 1859 and 1847. *Rec. vol. I*, pp. 698; 752, 753; 757.

- (23.) 1884. "*National Pictorial Edition with Supplement.*" Cover title, "*Webster's National Pictorial Dictionary.*"

Abridged from the Merriam's Webster's Unabridged Dictionary. Published and copyrighted by the Merriams, with notices of Merriam copyrights dated 1884 and 1867. *Rec. vol. I*, p. 699.

- (24.) 1881. "*Webster's Condensed Dictionary.*"

This book was abridged from the Merriam's Webster's Unabridged Dictionary of 1864, and was published and copyrighted by the Merriams, and sold with the names Ivison, Blakeman, Taylor & Co. and G. & C. Merriam & Co. in the imprint. *Rec. vol. I*, pp. 700; 756.

- (25.) 1884. "*Webster's Practical Dictionary.*"

Abridged from the Merriam's Webster's Unabridged Dictionary of 1864. Published and copyrighted by the Merriams and sold with the names of Ivison, Blakeman, Taylor & Co. and G. & C. Merriam & Co. in the imprint. *Rec. vol. I*, pp. 696; 755.

- (26.) 1886. "*Subscription Edition with Compendium.*" Cover title, "*Webster's National Pictorial Dictionary. Subscription Edition.*"

Abridged from Webster's Unabridged Dictionary of 1864 and constituting a new edition of the previous book of the same name above described under (23). Pub-

lished and copyrighted by G. & C. Merriam & Co. and bearing the Merriam name in the imprint and notices of Merriam copyrights dated 1886, 1884 and 1864. *Rec. vol. I*, pp. 701; 758.

RECAPITULATION.

Every Webster dictionary published in the period from 1847 to 1889, was a Merriam book, was issued under a Merriam copyright, and was published either by the Merriams directly or through a licensee. The "Octavo Abridgment" (*supra* (2) and (9), and the "Huntington Abridgments" (*supra* (3), were originally issued under a Webster copyright and license, and both the copyrights and the license contracts were assigned to the Merriams in 1853, 1854 and 1858. Instead of there being any independent or outside publishers of Webster dictionaries during this period there were merely licensees selling the books of one common proprietor, that proprietor being the Merriams.

Judge Colt's finding in the Ogilvie case that the Merriams were the *sole* publishers of Webster dictionaries between 1847 and 1889, and that at that time the name "Webster" had acquired a secondary meaning, was based upon the foregoing facts, and in view of them no other finding was possible.

THE ALLEGED COMPETITIVE PUBLISHERS.

The contention that licensees, such as Lippincott, American Book Co., etc., were competitive publishers of Webster's dictionaries is untenable, but it misled Judge Hand.

The other four alleged competitive publishers of Webster dictionaries during this period, as claimed by defendant, are (1), J. Duffy's Sons & Co.; (2), Ward, Locke & Co.; (3), Hurst & Co.; and (4), World Publishing Co. The evidence in regard to these alleged publications is as follows:

(1.) *J. Duffy's Sons & Co.*

The sole reference in the record to any publication by this concern is an index-card purporting to show that

there is in the Library of Congress a book, entitled as follows:

"A critical pronouncing dictionary of the English language, New and improved ed. By Noah Webster, LL.D. Cor. and improved, by James W. Kavanagh. Dublin, J. Duffy, Sons & Co., 1872."

That is absolutely all there is in the record. There is no evidence that the book was ever circulated or sold in the United States. No copy of it was produced in evidence, and it was not even seen by the witness who produced the Index-Card. Such a foreign publication, if there was one, can have no effect in this case. (*Rec. vol. III, fol. 7237.*)

(2.) *Ward, Locke & Co.*

A single witness testified that some time "about 1885 to 1890" a Chicago retailer called Revell Company sold several small dictionaries entitled "Webster's Dictionary," published by Ward, Locke & Co. of London, and imported. The witness could not approximate how many such books were sold by this concern, but said it was "certainly hundreds." He could not say when, or by whom, they were imported. He could not say when he had last seen a copy of any of them. He could not, and did not, produce a copy of any of the books. They are not listed in American catalogues. He did not know what, if any, connection there was between them and any book written by Noah Webster. He could not say how long they were on sale by this concern. The only thing he affirmatively undertook to state was that some copies of such books were imported and sold; that they were small books retailed at from 25c. to \$1.25. This is absolutely all the record contains as to these books. No other witness referred to them. They were not published, and apparently are not known in this country. (*Rec. vol. III, fols. 4772, 4773: 4794-4799.*)

Certainly this testimony does not rebut the fact, and Judge Colt's finding, that the complainant and its predecessors were the sole publishers of Webster dictionaries in this country during this entire period. If such importation and sale took place it was at most an insignificant and unknown infringement upon complainant's trade rights.

(3.) *Hurst & Company.*

The book produced to prove this publication was printed and published in the year 1912. This book bears copyright notices dated 1879 and 1882, but *at that time it was not entitled, "Webster's Dictionary"*, and it nowhere appears at what date the name "Webster" was adopted and used in connection with it. This book was successively published and copyrighted by Hurst under the following titles:—

"*American Diamond Pronouncing Dictionary*"; copyrighted 1878;

"*The American Popular Dictionary*", publishing date, 1882; copyright dates, 1879 and 1882;

"*Hansell's Practical Illustrated Pronouncing Pocket Dictionary*", publishing date, 1886; copyright date, 1886;

"*The Handy Reliable Dictionary*", copyright date, 1891.

It thus appears that *at least until after 1891* this book was not published as a Webster Dictionary. All of the above named dictionaries are apparently printed from the same, or a duplicate set of plates, and are the same book, notwithstanding their variously printed names. The books are here as exhibits and may be examined and compared. *Rec. vol. I*, pp. 666, 667; also *vol. III*, pp. 1817, 1819.

Defendant quoted the witness Ogilvie as testifying that this book had a "large sale in the "seventies", and referred to folio 7115 of the Record. Ogilvie did not so testify. He testified merely that "it must have had a very large sale", and he did not say when, but evidently meant down to the date of his testimony. He also did not say under what name or title this book had enjoyed such large sale. He testified that the title might or might not have been changed, and that the practice of changing titles for the same book had been indulged in by many publishers (*Rec. vol. III*, fol. 7275). He also testified that he did not know, and could not fix the date of the first use of the name "Webster" upon this book, and did not do so *Rec. vol. III*,

fols. 7263, 7282). Another witness, however, fixed the date as being in the "*early nineties*" (*Leon vol. III*, fol. 5001).

It is thus conclusively seen that during the period under consideration, this book was not published as a Webster's dictionary, and did not assume that name until after 1891, *i. e.*, in the early "nineties". It therefore does not rebut complainant's exclusive use of the name until after 1889, as found by Judge Colt.

(4.) *World Publishing Company.*

A single witness testified that a small book named Webster's Dictionary was published by a concern called the "World Publishing Company" "in the eighties". He could not fix the date. The book was given away for premium purposes, "probably off and on for two or three years". The book was not produced and nothing further was shown as to its nature, or character, or its exact title. He further testified that the World Publishing Company was out of business, and that he did not know what had become of the book. He could not say that the book was in the market today. That is all this witness knew about this book. (*Rec. vol. II*, fols. 5190-5192; 5569-5574.) No other witness appears ever to have heard of it, though book catalogues and library indexes have been ransacked by witnesses for defendant and their contents recited in evidence. The book may have been a genuine authentic Webster's dictionary, and entitled to bear the name, or it may have been an infringement. Nothing is shown or known about it. It was insignificant at most.

SUMMARY OF SECOND PERIOD: 1847-1889.

Complainant and its predecessors in title were the sole publishers and proprietors of Webster dictionaries during this entire period. *They had no competitors.* They had only licensees, who paid for the privilege of selling the complainant's book. Upon no conceivable theory can such *licensees* be termed "competitors". Complainant had licensees, but no competitors, down to 1889.

THIRD PERIOD:—1889 TO DATE.

A.

MERRIAM PUBLICATIONS SINCE 1889.

Without cessation, the Merriams continued, and now continue, to publish and revise their series of established Webster dictionaries, as follows:

(1.) 1890. "*Webster's International Dictionary.*"

This was the fifth regular and successive new and revised edition of Webster's Unabridged Dictionary. It was described on its title page as follows:

"Being the authentic edition of Webster's Unabridged Dictionary, comprising the issues of 1864, 1870 and 1884, now thoroughly revised and enlarged under the supervision of Noah Porter, D.D., LL.D. of Yale University".

The history of the making of this dictionary under the Merriam direction and control is set forth in its preface by Noah Porter. This book was published and copyrighted by G. & C. Merriam & Co., with their name in the imprint, and with notices of Merriam copyrights dated 1890, 1884, 1879 and 1864 (*Rec. vol. I*, pp. 702; 759; 760). The testimony is that the great reputation and authority of Webster's dictionary rests mainly upon this edition and its immediate predecessors, all published and owned by the Merriams. *Rec. vol. I*, fols. 1337; 1567; 1873-4; 1830; 1891; 2000.

(2.) 1892. "*Webster's High School Dictionary.*"

Abridged from Webster's International Dictionary. Prepared, copyrighted, owned and published by G. & C. Merriam Co., and published with the names American Book Company and G. & C. Merriam Co. in the imprint, and with notice of the Merriam copyright. *Rec. vol. I*, pp. 703, 762.

(3.) 1892. "*Webster's Primary School Dictionary.*"

Abridged from Webster's International Dictionary. Prepared, copyrighted and owned by G. & C. Merriam

Co. Published and sold with the names American Book Company and G. & C. Merriam Co. in the imprint. *Rec. vol. I*, pp. 704, 763.

(4.) 1892. "*Webster's Common School Dictionary.*"

Abridged from Webster's International Dictionary. Prepared, published, copyrighted and owned by G. & C. Merriam Co. Published with the names American Book Company and G. & C. Merriam Co. in the imprint, and with notice of the Merriam copyright. *Rec. vol. I*, pp. 705, 762.

(5.) 1895. "*Webster's Academic Dictionary.*"

Abridged from Webster's International Dictionary. Prepared, published, copyrighted and owned by G. & C. Merriam Co. Published and sold with the names American Book Company and G. & C. Merriam Co. in the imprint, and with notice of the Merriam copyright. *Rec. vol. I*, pp. 706, 764.

This book supplanted the previous Merriam abridgment of the same name, abridged from the 1864 edition and copyrighted in 1867, which in its turn had supplanted a previous book of the same name abridged from the 1840 edition and published by Webster through the Huntingtons, and sold and assigned to the Merriams, as already stated.

(6.) 1896. "*Webster's Counting House Dictionary.*"

Abridged from Webster's International Dictionary. Published and copyrighted by G. & C. Merriam Co. with the names American Book Company and G. & C. Merriam Co. in the imprint, and notice of the Merriam copyrights dated 1896 and 1895. Also bearing the Merriam's registered trade-mark. *Rec. vol. I*, pp. 707, 765.

(7.) 1898. "*Webster's Collegiate Dictionary.*"

Abridged from Webster's International Dictionary. Compiled, published, copyrighted and owned by G. & C.

Merriam Co. Published with the Merriam's registered trade-mark and the Merriam name in the imprint, and notice of the Merriam copyright. *Rec. vol. I*, pp. 709, 765.

(8.) 1898. "*Australasian Edition. Webster's International Dictionary.*"

This was the Merriam's Webster's International Dictionary of 1890, with a voluminous appendix and an Australasian supplement. Copyrighted, published and owned by G. & C. Merriam Co. *Rec. vol. I*, p. 766.

(9.) 1898. "*Historical Supplement to Webster's International Dictionary.*"

Copyrighted and owned by G. & C. Merriam Co. *Rec. vol. I*, p. 767.

(10.) 1900. "*New Edition with Supplement.*" Cover title, "*Webster's International Dictionary*".

This was a new edition of the 1890 edition of Webster's Unabridged Dictionary, with a new supplement of 25,000 words. Published and copyrighted by G. & C. Merriam Co., bearing the Merriam registered trade-mark and with the Merriam name in the imprint, and notices of the Merriam copyrights dated 1900, 1890, 1884, 1879, and 1864. *Rec. vol. I*, pp. 710, 768.

(11.) 1903. "*Webster's Unabridged Dictionary.*"

This was a new edition of the Merriam's Webster's Unabridged Dictionary of 1864, with an appendix and supplement. Copyrighted and published by G. & C. Merriam Co. Imprint, "Published for the Trade". Notices of Merriam copyrights dated 1864, 1879 and 1903. Also notice of renewal of the 1864 copyright dated 1892. *Rec. vol. I*, pp. 711, 770.

(12.) 1905. "*Webster's Little Gem Dictionary.*"

Abridged from Webster's International Dictionary. Compiled, published and copyrighted by G. & C. Merriam

Co., bearing the Merriam registered trade-mark and notice of the Merriam copyright, and with the Merriam name in the imprint. *Rec. vol. I*, pp. 712; 771.

(13.) 1905. "*Australasian Edition. Webster's International Dictionary.*"

This was the Merriam's Webster's International Dictionary of 1890, with an additional appendix. Published and copyrighted by G. & C. Merriam Co. *Rec. vol. I*, p. 772.

(14.) 1906. "*Webster's Condensed Dictionary.*"

Published and copyrighted by G. & C. Merriam Co., with notices of Merriam copyrights dated 1884 and 1906, and with the Merriam registered trade-mark. Names in imprint: The Reilly & Britton Co. and G. & C. Merriam Co. (*Rec. vol. I*, pp. 713; 774).

This was a new and revised edition of a previous edition of the same book under the same name, published and copyrighted by the Merriams in 1884, which book was based on the Merriam's 1864 edition of the unabridged dictionary of Noah Webster. Reilly & Britton Co. are mere licensees. *Rec. vol. I*, pp. 591, 592, 596, 597, 635.

(15.) 1906. "*Webster's Practical Dictionary.*"

Published and copyrighted by the Merriams and published with the Merriam registered trade-mark, and with the names Reilly & Britton Co. and G. & C. Merriam Co. in the imprint, and notices of the Merriam copyrights dated 1884 and 1906. This book was a new edition of the 1884 edition of the same title, which was based on the Merriam's 1864 edition of Webster's Unabridged Dictionary. *Rec. vol. I*, pp. 714; 773; 775.

(16.) 1909. "*Webster's New International Dictionary.*"

This was the sixth regular and successive new and revised edition of Webster's Unabridged Dictionary. It

was based on Webster's International Dictionary of 1890 and 1900, and completely revised. It was published and copyrighted by G. & C. Merriam Co. and bears the Merriam registered trade-mark and notice of the Merriam copyright. *Rec. vol. I*, pp. 715; 776.

(17.) 1909. "*Webster's Condensed Dictionary.*"

A new edition of the 1884 and 1906 editions of the same book under the same name already described. Published and copyrighted by G. & C. Merriam Co., with the names Reilly & Britton Co. and G. & C. Merriam Co. in the imprint. Also bearing the Merriam registered trade-mark. *Rec. vol. I*, pp. 716; 777.

(18.) 1910. "*Webster's Collegiate Dictionary.*"

A new edition of the Merriam's Webster's Collegiate Dictionary of 1898, with a supplement of additional words and meanings. Abridged from Webster's International Dictionary. Copyrighted and published by G. & C. Merriam Co. with the Merriam trade-mark and the Merriam name in the imprint. *Rec. vol. I*, pp. 717; 780.

(19.) 1910. "*Webster's Practical Dictionary.*"

A new edition of the editions of 1884 and 1906 of the same book under the same name described above. Published and copyrighted by G. & C. Merriam Co. Bearing the Merriam trade-mark and the names Reilly & Britton Co. and G. & C. Merriam Co. in the imprint, and notices of the Merriam copyrights dated 1884, 1906 and 1910. *Rec. vol. I*, pp. 718; 780.

(20.) 1911. "*Webster's Little Gem Dictionary.*"

Abridged from Webster's International Dictionary. This was a revised edition of a previous book of the same name described above. It was published and copyrighted by G. & C. Merriam Co. with the Merriam registered trade-mark and the Merriam name in the imprint, and with notice of the Merriam copyright dated 1911. *Rec. vol. I*, pp. 719; 781.

COMPETITIVE UNABRIDGED DICTIONARIES.

Although the copyright on the first Webster's dictionary expired in 1834, and the copyright upon the first Webster's Unabridged Dictionary (1828 Ed.), expired in 1870, complainant and its predecessors continued to be the sole makers and proprietors of Webster dictionaries until after the copyright had expired in 1889 upon the Merriam's 1847 Edition of Webster's Unabridged dictionary. Since 1889 the Merriams have continued to publish and sell their said series of Webster dictionaries, and to issue new and revised editions thereof, without cessation or break.

Beginning about the year 1890, several publishers have since issued and sold in cheap form a photographic reprint of Webster's Unabridged Dictionary of 1847. No copies of these reprints referred to by defendant's witnesses were produced in evidence. One copy was stipulated as an exhibit. (*Rec. vol. III*, p. 1828). These reprint editions were, in fact, genuine copies of Webster's dictionary, though of an obsolete edition. It must be presumed that the publishers of these reprints refrained from fraud, kept within their legal rights, and distinguished their books from complainant's books, and if so, there is nothing in the publication of these reprint editions which could possibly affect the secondary meaning of the name "Webster", as indicating the dictionaries published by complainant. Some of these reprints, however, were published in such form as to be readily mistaken for the complainant's later revised and copyrighted editions of the same book, as shown by the early "*Webster Dictionary case*" which granted relief to complainant. *Merriam v. Texas Sifting Co.*, 49 Fed. 944; *Merriam v. Famous Shoe Co.*, 47 Fed. 411; *Merriam v. Holloway Co.*, 43 Fed. 450.

The defendant has shown the mere fact of the existence in the market of these reprint editions bearing the name "Webster". To the extent (not shown by the evidence) that these dictionaries have not been adequately distinguished from complainant's dictionaries, they have been in-

infringements upon the complainant's rights; but it has not been shown by any evidence that they have yet diminished the trade significance and secondary meaning of the name "Webster". Judge Colt expressly so found, notwithstanding the fact that these reprint editions were specifically called to his attention. *Ogden v. Morrison*, 122 F.2d 624.

Only one competitive large or undridged dictionary, other than mere reprints, has been issued by any one at any time. This is the so-called Webster's Imperial Dictionary, published in 1924, which was the subject matter of the Ogden suit before Judge Colt in the First Circuit, and of the Suffolk suit in the Sixth Circuit. This book was a revised edition of the Merriam's 1897 edition. The use of the name "Webster" therein was required unless accompanied by a prescribed explanatory statement which those courts deemed sufficient to prevent deception. Under these circumstances the publication of the Ogden or Suffolk dictionary cannot in any way prejudice complainant's rights.

It may be added that the Ogden Dictionary has borne a variety of names, such as "Webster's Imperial Dictionary", "Webster's Universal Dictionary", "Webster's Monarch Dictionary", "Webster's Comprehensive Dictionary", etc. These are but different names given to the same book. *See, vol. III, cols. 7256-7257.*

It is abundantly shown, without even any attempted contradiction, that the great reputation and good-will of Webster's Dictionary today is attached to the recent books which the Merriams publish, and not at all to either the obsolete reprints or the Ogden revision of the obsolete and expired book. *See, vol. I, cols. 1225, 1237, 1239, 1272-1274, 1291, 2000.*

Judge Hand said in his opinion below, that if these books were truly described as "one of the original Webster's dictionaries", this fact "would probably destroy any possibility of its sale" (*See, vol. III, p. 2022, 1st. 1292*). This can only mean that these books will become they

deceive the public and trade upon the reputation of later copyrighted Webster dictionaries prepared and published by the complainant, and with which they have neither a literary nor a commercial connection.

C.

COMPETITIVE SMALL DICTIONARIES.

The actual evidence in the record of small dictionaries published under the name Webster is extremely meager. It consists of some twenty-five volumes filed as exhibits. All of these exhibits were purchased in the year 1912. Most of them have very recent dates in the imprint and in the copyright notices. No evidence was offered as to the date when the books were first published, or as to the date when the name Webster was first used thereon. This is a very significant omission, for it appears from a comparison of the dictionary exhibits before the Court:

First, that many of these books were originally published under other titles, and not under the name Webster's; and

Second, that many of these books are the same identical work concurrently sold by various concerns under different names. *Rec. vol. I*, pp. 664-669; *Rec. vol. III*, pp. 1833-1837; See also the *Exhibits* themselves.

The copyright date upon the book does not prove that the name Webster was in the title at that time, because it appears that such titles were frequently changed. The copyright certificates which would have shown with certainty what was the fact, were not produced.

The sole fact proved by these exhibits is that in the year 1912 these books were sold under the name Webster. That is *their full net value as evidence*.

As will be pointed out, many of these books are simply frauds. None of them are of any literary importance, or have any authority or reputation of their own. (*Rec. fols. 1960, 1454-1457, 1561, 1868, 1876, 1332-1337, 1999-2002, 1829, 1897-8.*) They are literary flotsam and jetsam which has been seized by unscrupulous publishers and passed off

as "Webster's" dictionaries, without a shadow of justification or excuse.

Incompetent evidence was offered through several witnesses who stated over complainant's objection that books bearing specified titles had been published by specified publishers, or that they were so listed in book catalogues. These books were not produced and identified, and no dates were fixed. This testimony was mainly given by the hostile Ogilvie, whom the Merriams had convicted of fraud, and whose books and advertisements they had enjoined (*Rec. fols. 7102-7156*). The president of defendant Cupples & Leon Co. gave similar testimony, (*Rec. fols. 4994-5001*). Both of these witnesses are greatly biased. The comments of the Boston Courts on Ogilvie deprived his testimony of any weight. Judge Hand commented severely upon Leon's testimony, pronouncing it "very unsatisfactory", and finding that his claims and advertisements were not justified or warranted by the facts (*Rec. vol. III, p. 2070, fols. 8277-8*).

The testimony of these and other like witnesses as to the contents of printed books which should have been, but were not produced, is hearsay and secondary evidence. It was duly objected to as incompetent upon this ground, and because it was not shown whether or not these publishers had conformed to the limitations upon their rights. *Rec. vol. II, p. 1249, fol. 4995; Rec. vol. III, p. 1776, fol. 7103*. The Court is asked to disregard this line of testimony. It is an injustice to consider it, because complainant was deprived of the opportunity to make any effective cross-examination. In the absence of the books referred to by the witnesses, many of which counsel had never heard of before, complainant was unable to show: (1), that many of such books were the same identical book with merely the name changed, thus cutting down the number of distinct books and publishers using the name; (2), that such books were small, ephemeral publications,—many mere vest-pocket word lists, of no literary merit or reputation; (3), that many of them were mere fraud books, originally published under some name

other than Webster; (4), the actual date when the name Webster was first used on such books; (5), whether or not such books were in fact reprints of expired Webster dictionaries, and thus entitled to use that name, within legal limitations; and (6), whether or not such books, in title page and cover inscriptions, conformed to such limitations. None of these facts anywhere appear.

The embargo placed on any effective cross-examination by this failure to produce the books referred to, is well illustrated by the witness Ogilvie. He testified freely on direct-examination as to a long list of alleged Webster dictionaries not published by the Merriams, but on cross-examination he refused to answer without the books. For example:

" x-Q. 190. Did you know as a matter of fact that the book which Ivison, Blakeman, Taylor & Co. published under the name of Webster's Handy Dictionary was a book belonging to the Merriam Co.? A. I have never seen the book; therefore know nothing about it" (*Rec. vol. III, fol. 7250*).

" x-Q. 200. Under how many names has your book 'Webster's Imperial Dictionary' been published? A. I think the book is the best evidence of that fact.

" x-Q. 201. It has been published under each of the following names, has it not: Webster's Imperial Dictionary, Webster's Universal Dictionary, Webster's New Cosmopolitan Dictionary, Webster's Monarch Dictionary, Clarkson's Dictionary? A. You haven't given the whole list. There are some things even you don't know about that.

" x-Q. 202. It has, however, been published under the names mentioned? A. I have seen copies of the books published under some of those titles, but not all of them.

" x-Q. 203. What is your best knowledge, information and belief as to whether it has been published under all of them? A. The books are the best evidence.

" x-Q. 204. What is your best knowledge, information and belief on that subject? A. I repeat, the books are the best evidence.

" x-Q. 205. Question repeated? A. Answer the same.

" x-Q. 206. What other names do you believe that book has been published under? A. The books are the best evidence.

" x-Q. 207. What other names, please? A. Same answer.

" x-Q. 208. *I cannot find the books, without the names.* Please give the names? A. You know enough. The same answer.

" x-Q. 209. That is the only answer you will make? A. That is the only one.

" x-Q. 210. How many other names? A. The books are the best evidence.

" x-Q. 212. Then you won't assist the Court in arriving at the truth by giving such information as you can? (No answer.)

" x-Q. 213. Please answer the question. A. I have answered it.

" x-Q. 214. When did you say the name 'Webster' was first used on the Hurst book? A. I didn't say.

" x-Q. 215. When was it? A. I don't know.

" x-Q. 222. A. If that is true, the book is the best evidence of the fact.

" x-Q. 230. I didn't ask you that. I asked you if you ever knew of that book under any other name, of which Webster did not form a part? A. If I did, I have forgotten it. I have not attempted to keep track of any of these changes in titles or the books involved in the litigation. *You cannot get me to make any definite statement in regard to it, unless I have the books right before me to refer to.*" *Rec. vol. III*, pp. 1815-1820, fols. 7259-7624; 7267; 7270.

Obviously the direct testimony of this witness was only part of the truth, and complainant was prevented from getting the whole truth by the incompetent way in which this testimony was given. "The books are the best evidence" this witness says, and accordingly his incompetent and biased statements as to their contents and inscriptions should be disregarded. The same considerations apply to all of this class of testimony.

The only competent evidence of any competitive use of the name Webster consists of the twenty-five (25) dictionary exhibits which have been offered in evidence. Presumably

there are no others to be found, or they would have been produced.

Upon examination this list of twenty-five alleged competitive Webster's dictionaries, mainly recent books, dwindles considerably.

Webster's Library Dictionary, published by Donohue & Co.

Webster's Business & College Dictionary, published by W. B. Conkey Co.

Webster's Modern Dictionary, published by L. W. Walter Co.

Webster's American Standard Dictionary, published by Commonwealth Pub. Co.

These four exhibit books are the same identical dictionary printed from the same or a duplicate set of plates. These dictionaries were published by Donohue & Co. as late as the year 1905 under the title of "Donohue's Standard New Century Dictionary", in connection with which the name Webster does not appear. Doubtless all four books are printed by one concern and distributed with the other names in the imprint for trade reasons in accordance with familiar custom. They are mere fraud books. *Rec. vol. I*, pp. 664, 665; See also *Exhibit Books*.

Webster's Universal Self-Pronouncing Dictionary, published by John C. Winston Co.

The above title as given by defendant is *not the title* of, and does not appear upon the book itself which is entitled, "Universal Self-Pronouncing Dictionary". The name Webster does not appear in the title upon either the title page or cover of this book which merely purports to be "based upon the solid foundation laid by Noah Webster and other lexicographers". This book is substantially the same book as the book of the two defendants involved in this case. It is a substantial reprint of the "Crown" dictionary. *Rec. vol. I*, p. 665; See also *Exhibit Books*.

Webster's School & Office Dictionary, published by Thompson & Thomas.

This book is apparently printed from the same or a duplicate set of plates as a book originally published under the title of "The Complete Compendium" by William Rawlston Balch, in connection with which the name Webster nowhere appears. It was a plain fraud to change its title to "Webster's School & Office Dictionary", and there is no evidence as to when this was done. *Rec. vol. I*, p. 666; see also *Exhibit Books*.

Hurst's Webster's Dictionary, published by Hurst & Co.

This is the same book which has already been discussed. The above title is a mere cover title and the title given upon the title page is substantially different. This book was originally published under the following titles, which do not include the name Webster, viz: "The American Diamond Pronouncing Dictionary"; "Hansell's Practical Illustrated Pronouncing Pocket Dictionary"; "The American Popular Dictionary"; "The Handy Reliable Dictionary". The name Webster was certainly not added to it until after 1891. How long after does not definitely appear. *Rec. vol. I*, pp. 666-7. See also *Exhibit Books*.

Webster's Pronouncing Dictionary, published by F. Tennyson Neely.

This is the same identical dictionary apparently printed from the same or duplicate plates as a book previously published under three different names, none of which include the name Webster, to wit: "Craig's Dictionary", dated 1882; "The Excelsior Dictionary", dated 1883; "The Popular American Dictionary", dated 1886. It was a mere fraud to adopt the name Webster for such a book. *Rec. vol. I*, pp. 667-8; see also *Exhibit Books*.

Laird & Lee's Webster's New Standard Dictionary, Library Edition.

Laird & Lee's Webster's New Standard Dictionary, Common School Edition.

Laird & Lee's Webster's New Standard Dictionary, Elementary School Edition.

Laird & Lee's Webster's Modern Dictionary.

Laird & Lee's Webster's New Standard American Dictionary, Encyclopedic Edition.

Suit was promptly brought against Laird & Lee for using the name Webster upon these books, and that suit is now pending in the Federal Court at Chicago before a Master. The two books designated "Library Edition", and "Common School Edition" are printed from the same plates and are identically the same book with possibly very minor changes. See *Exhibit Books*.

Webster's Inter-Collegiate Dictionary; Webster's Adequate Dictionary; Webster's Sterling Dictionary; Webster's Reliable Dictionary, published by Ogilvie and Saalfeld.

These are the dictionaries recently enjoined in the Sixth Circuit. The "Adequate", "Sterling" and "Reliable" dictionaries are identical with each other, and are the same book under different names. They are also identical with the "Inter-Collegiate", having been made from the latter by simply lifting out the type for the concluding portion of the definitions. All these books were printed from one setting of type appears from the fact that their lines exactly register. Moreover these books are copied *verbatim et literatim* from the British "Chambers' Twentieth Century Dictionary", with which they are more than 98% identical, as will appear from inspection, and that fact has been found and adjudged by the court.

The group of five small vest pocket dictionaries are mere word lists of no literary importance. One of them is on its face a mere advertisement intended to be given away.

There was no attempt to show that any of these books have acquired any reputation, authority or good will of their own. Their character may be judged from their history and their frequent change of name. The Court is asked to presume from their mere existence in the market, for that is all that is shown, that they have destroyed the secondary meaning, good will and reputation of the genuine established Webster Dictionaries, developed as one series under one responsible supervision for almost a century.

By means of incompetent testimony, already referred to, and by duplicating the same publication under different names and titles, defendant claims a long list of competitive publishers of Webster Dictionaries since 1889. It is shown by the testimony of defendant's witnesses that the plates and contents of these books have been shifted among various publishers, and their titles have been changed from time to time, and that all sorts of names have been placed in the imprints (*Rec. vol II*, pp. 1393; 1010; 1014; 1015; 1016; 1819). It is fair to presume that the various books referred to and not produced are the same books as those that were produced and offered in evidence. The infringement upon complainant's trade rights has been quite extensive, but not nearly so great as defendant strives to make it appear. Thus in the list of alleged competitive publishers defendant names the American Book Co., Ivison, Blakeman, Taylor & Co., and Reilly & Britton Co. All of these are shown to have been mere licensees of complainant selling complainant's books (*Rec. vol. I*, pp. 132, 133, 165, 221, 222, 635, 591, 592). The Miles Vest Pocket Dictionary, referred to but not produced, is the same as the Wehman Vest Pocket Webster, which was produced and which bears the Miles copyright. The Vest Pocket Webster Dictionaries referred to as having been published by M. A. Donohue & Co., The Saalfeld Publishing Co., Thompson & Thomas, I. & M. Ottenheimer, George W. Ogilvie & Co., David McKay, none of which were produced, are the same identical book as the Hill's Vest Pocket Webster, which was

produced. The five dictionaries alleged to have been published by Ogilvie are the same as the similar dictionaries published by Saalfield as Ogilvie's successor. The Success Publishing Co. simply used one of the Ogilvie-Saalfield books as a premium (*Rec. vol. I*, pp. 107-108; 181-184). The Monarch Book Co. was a mere name in the imprint of the Saalfield dictionary (*Rec. vol. III*, fol. 7258). The Hampden Publishing Co. was stopped by injunction from using the name Webster, the decree being entered *pro confesso* (*Rec. vol. III*, fol. 7281). The Webster's Standard American Dictionary claimed to have been published by John Hovenden is apparently the book of the same name issued with the imprint of the Commonwealth Publishing Co., and which is identical with several others. The Riverside Publishing Co. merely sells one of the Saalfield large dictionaries (*Rec. vol. III*, fols. 7295-7299).

Complainant's answer to the existence of these infringing publications is that they have not yet destroyed the secondary meaning and trade significance of the name Webster; that the use of the name Webster thereon is still deceptive, and that piracy by one person does not authorize or justify piracy by another.

With substantially all these competitive or infringing books before him, and referred to by him in his opinion, Judge Colt in 1904, notwithstanding their existence, found that the name Webster's Dictionary still retained its secondary meaning, which it had acquired at and prior to 1889, and indicated the books published by the complainant. This finding was affirmed on appeal. No other result was possible.

II.

EVIDENCE SHOWING TRADE SIGNIFICANCE AND SECONDARY MEANING OF NAME "WEBSTER'S DICTIONARY", AND DECEPTION OF PURCHASERS BY DEFENDANT.

A. PURCHASERS ACTUALLY DECEIVED.

F. W. Seybel is a merchant and importer, and president of the F. W. Seybel Company. He purchased a copy of defendant's book from the *New York American*. He con-

sidered "Webster's Dictionary" as "the leading dictionary" (*Rec. vol. I, fol. 996*) and knew that the Merriams were the publishers of it (*Rec. vol. I, fol. 997*). He believed he was getting a genuine "Webster's Dictionary" which had a favorable reputation with him. He testified in part as follows:

"I did not know what this was, nor did I have the time or opportunity to examine it very critically. I would not have been interested had I not believed that I was purchasing the genuine dictionary, Webster's dictionary" (*Rec. vol. I, fol. 1002*).

He said he meant by a "genuine Webster's Dictionary" "a dictionary published by the Merriam Company known as Webster's Dictionary" (*Rec. vol. I, fol. 1003*). "I believed that there was only one Webster's Dictionary,—published by the Merriam Company; I mean by one that there were probably a number of editions; I believed that I was getting an abridged copy; I did not expect to get for such a small sum the Webster's unabridged . . . I presumed that I was purchasing an abridged copy of a genuine Webster's Dictionary, . . . of a current edition" (*Rec. vol. I, fols. 1003-1004*).

On cross-examination Mr. Seybel testified as follows:

"x-Q. 44. Are you more interested in buying a dictionary, or more particularly, in buying an edition of a Webster's dictionary, in the publisher or in the editor? A. I am interested in buying a dictionary more according to its reputation.

"x-Q. 45. Do you mean its reputation for the correctness of its contents or for the accuracy of its type and the elaborateness of its binding? A. For the correctness of its contents.

"x-Q. 47. What is there about the name 'Webster's Dictionary' that attracts you? A. Its name and reputation.

"x-Q. 48. Its reputation for what? A. Its reputation for being probably the best English dictionary extant.

"x-Q. 49. Why do you consider it so? A. For the reason that it is to be found in the best places of learning in English speaking countries.

"x-Q. 50. And when we have been using the term 'Webster's Dictionary' what edition of it have you meant? A. All editions in their time" (*Rec. vol. I, 1003-1023*).

Laura Dunbar Hagarty, a teacher of English in the Teachers' Training School at Buffalo, bought a copy of defendant's dictionary from the *Buffalo Evening News*. She testified:

"How did you come to make that purchase?

A. I read the advertisement in the *Buffalo Evening News* of a dictionary, Webster's Dictionary, for sale. I went to the *News* office and bought a dictionary that I thought I was going to pay \$4.98 for, but when I received the change, it was a 98-cent dictionary I bought. I thought I was buying the five-dollar edition of the G. & C. Merriam dictionary . . . I am not jumping at G. & C. Merriam, I have known of the publishing house for a great many years . . . Last spring my brother-in-law came from Winnipeg with a five-dollar copy of the G. & C. Merriam Webster's Dictionary. It was just the size that I wanted, in every way the dictionary that I wanted; and when I carelessly read the *News* advertisement, I thought that was the dictionary I was getting. That is why I jumped at that dictionary" (*Rec. vol. I*, fols. 1764-1767).

"Q. What effect did the name 'Webster' in the advertisement of this book have in inducing you to make this purchase? A. It had the entire effect. There was absolutely no other consideration.

"Q. Did you examine or test the book at or before the time you bought it? A. No.

"Q. What did you rely upon to show that it was a book worth buying? A. The title of 'Webster' on the cover . . . I intended to buy the genuine Webster, the G. & C. Merriam Webster" (*Rec. vol. I*, fols. 1668-1669).

Miss Hagarty failed to notice the name "Syndicate Publishing Company" on the title page. She also testified that she did not expect to buy the "Crown Dictionary" and did not know that she had in fact bought the book of that name" (*Rec. vol. I*, fols. 1770-1771).

Joseph C. Cooper, a bank clerk at Springfield, Mass., purchased defendant's dictionary from the *Springfield Union*, a newspaper of that city. He testified:

"I understood that it was the G. & C. Merriam's dictionary that they were offering, and I thought it

would be a good thing to have" (*Rec. Vol. I, fols. 448-450*). "I took it for granted that it was the Merriam's making this offer through the *Springfield Union*" (*Rec. vol. I, fol. 450*).

"Q. 24. Upon what did you rely, if anything, as an assurance that this book which you bought was an accurate, reliable dictionary worth buying? A. Upon the name 'Webster,' that first came in my head, probably from Webster's International Dictionary, and associating that with the Merriam's, I thought that if it was not the large dictionary it would be up to date to a certain extent, as far as they could make it so" (*Rec. vol. I, fols. 457-458*).

"I thought the *Union* had some deal on with the Merriam Company whereby they were getting along all right and the Company were too, and at the same time it was an advertisement for both" (*Rec. vol. I, fol. 455*).

Mr. Cooper had known of the Merriams as publishers of the Webster dictionaries as long as he could remember, and from the time he used it at school. He never knew that any concerns other than the Merriams published dictionaries under the name of "Webster's" (*fols. 455-468*). He did not examine the title page or note the name in the publisher's imprint (*Rec. vol. I, fol. 461*).

Irving S. Pulcifer, treasurer of the Springfield Safe Deposit Company, and a member of the Springfield School Board, bought a copy of defendant's dictionary without examination, relying upon the name "Webster" as an assurance of quality. That name conveyed that assurance "simply because I had known that the Webster's Dictionary was accepted as a standard authority" (*Rec. vol. I, 831-832*). He thought the book bought was "the only Webster I ever knew about; I assumed that it was a Merriam publication. . . . Because of the word 'Webster'" (*Rec. vol. I, fol. 830*). He testified that he had never heard of the Crown Dictionary; that he did not intend to buy it, and that if defendant's book had been published under its name of Crown Dictionary, he would not have bought it. He stated his reason: "Merely because I desired a dictionary that I could consult as authority and

not knowing anything about the standing of the so-called Crown Dictionary I certainly never would have purchased it" (*Rec. vol. 1, fol. 834-835*).

Charles Rogers, bought defendant's book without examination upon the reputation of Merriam's dictionary as a standard work and relying upon the title "Webster's Dictionary" as an assurance of quality (*Rec. vol. 1, fol. 798-799*).

"I believed I was buying a book which was issued by the Merriam folks. No doubt of it crossed my mind" (*Rec. vol. 1, fol. 783*).

Clinton W. Couder, the local representative in Springfield for the National Surety Company and for the Connecticut General Life Insurance Company, purchased defendant's book "under the supposition that it was a book published by G. & C. Merriam of Springfield, Mass." (*Rec. vol. 1, fol. 407*). He did not examine the book before buying it, "just took it" . . . "in the assumption that it was a bona fide Webster's Dictionary" (*Rec. vol. 1, fol. 408*). "The word Webster being connected with the title led me to suppose it was the real thing" (*Rec. vol. 1, fol. 408*). He relied on the name "Webster" as showing that the book was a good and reliable dictionary (*Rec. vol. 1, fol. 408*). "I bought it sight unseen" (*Rec. vol. 1, fol. 409*). He found the book unsatisfactory in one, because of the omission of words naturally to be expected to be contained therein (*Rec. vol. 1, fol. 409-410*). He had heard of the Crown Dictionary, but did not intend to buy a copy of it (*Rec. vol. 1, fol. 413-414*).

Edward Kennell, knew that G. & C. Merriam Company published the Webster's Dictionary and supposed they were the only publishers of it (*Rec. vol. 1, fol. 841*). He bought defendant's book through the *Springfield Union*.

"I intended to buy Webster's Dictionary; I thought that I got a Webster's . . . If I had been some other dictionary that they advertised I shouldn't have made the purchase" (*Rec. vol. 1, fol. 841-842*).

Some years before Mr. Kennell had purchased the Crown Dictionary from the *Christian Herald*, and had a

copy of it at home. He did not intend to buy another copy of it when he bought Atwood's Dictionary. "I intended to buy a Webster's Dictionary" (See vol. 5, file 350-351).
Charles F. Crockett, bought Atwood's book. (See vol. 5, file 351).

I merely noticed it was a Webster's Dictionary. . . . I presumed I was getting one of the common publications, Webster's Dictionary" (See vol. 5, file 351).

"Q 13. What connection did you think there was between the book which you bought from the Springfield Store and Webster's International Dictionary, previous to your obtaining it or at the time? A. I supposed they were published by the same party.

"Q 14. What made you think that A. Brown the name of Webster was associated with both? (See vol. 5, file 351, 352).

He testified that if the book had not been called "Webster's Dictionary" he would not have bought it, giving as his reason that he was acquainted with Webster's Dictionary and had no interest in any other (See vol. 5, file 351).

George F. Clark, a book seller and clerk of the common council of Springfield, bought Atwood's Dictionary without examination. "I laid it up from the word 'Webster'" (See vol. 5, file 351, 352). "I thought I was getting G. & C. Merriam's Webster's Dictionary (See vol. 5, file 351). "That is what made me buy it" (See vol. 5, file 351, 352). He had never heard of the Cross Dictionary, and did not expect to get it when he bought Atwood's Dictionary (See vol. 5, file 351, 352). He did not intend to buy any of the dictionary offered for sale, but expected to purchase a Merriam Dictionary which he believed was being disposed of through the newspapers at a cheap price to make way for a new edition (See vol. 5, file 352).

Henry E. Hays, a manufacturer, testified:

"I believed that I was buying a genuine Webster's Dictionary (See vol. 5, file 351, 352). "I supposed it was identical in a new form" with the Webster's Dictionary previously known to me (See vol. 5, file 351, 352). He believed the book was no longer

ment of the original Webster's Dictionaries brought up to date by the authorized successors of Noah Webster's estate (*Rec. vol. I, fols. 1287-1289*).

"I was wholly influenced by the name 'Webster' . . . Webster meaning to me a dictionary of the highest standard" (*Rec. vol. I, fol. 1311*). He did not think about the publisher. "The name 'Webster' was all that interested me. . . . It meant to me the highest authority in a dictionary" (*Rec. vol. I, fol. 1294*).

He made no examination before buying, but relied on the name "Webster's" as "a guarantee that I was getting the best dictionary as far as I knew" (*Rec. vol. I, fol. 1291*).

"I did not give spelling a thought, taking it for granted that I was purchasing a genuine Webster's Dictionary in which the spelling was bound to be correct and never having heard of a Webster Dictionary that was not genuine" (*Rec. vol. I, fol. 1301*).

Mr. Hughes had never heard of the Crown Dictionary and did not intend to buy it when he bought the defendant's dictionary. The fact that defendant's dictionary was a reprint of the Crown Dictionary would have prevented his purchase if he had known of it (*Rec. vol. I, fols. 1303-1304*). When he learned the facts he felt that he had been imposed upon (*Rec. vol. I, fol. 1305*).

Arthur Lutz, a clerk, became acquainted with Webster's dictionaries at school where he used complainant's "Webster's High School Dictionary." He bought defendant's dictionary from the *Brooklyn Times*. He testified:

"I thought I was buying a copy of the Webster dictionary. . . . I believed the book which I was about to purchase was published by the same company as that which published the one I used at school" (*Rec. vol. I, fols. 1185-1189*). "I believed it was a book which was published by the company which I assumed published all Webster's dictionaries" (*Rec. vol. I, fol. 1192*).

"I believed that in purchasing a Webster's Dictionary I was getting the best book and the best value for the money I paid out" (*Rec. vol. I, fols. 1190-1191*).

"My impression had always been that the Webster Dictionary was the best authority and in

fact I have seldom had occasion to refer to any other, and for this reason I relied upon the name 'Webster' as it appeared on the cover of the book as something which indicated that I was to get the best book obtainable for the price" (*Rec. vol. I, fol. 1197*).

Edith Fisher, a teacher in the public schools at Buffalo, was deceived into purchasing defendant's book from the *Buffalo News*. She intended to buy "the regular Webster's Dictionary" (*Rec. vol. I, fol. 1737*). She bought defendant's book "because it was advertised as the 'Webster'" (*Rec. vol. I, fol. 1739*).

"I supposed it was by the same author as the one we had used in the schools" (*Rec. vol. I, fol. 1740*).

She thought it was one of the books that are standard in the Buffalo schools (*Rec. vol. I, fol. 1741*). She would not have bought it had it been called "Crown Dictionary."

"I would not have bought it if it was not called Webster's. . . . I wanted a Webster. . . .

How could it be a Webster if it was a Crown?

. . . . If I thought it was ever called the Crown, I don't suppose I would ever have bought it—if it had ever been called anything but a 'Webster.'

. . . . I wanted something that was a real Webster, not anything based on it. Any book might be based on anything else, and still be entirely different.

. . . . Q. What do you mean by 'a real Webster'?

A. One that has been called nothing but a 'Webster'; always been a Webster; from the original Webster. . . . I don't see why they would

ever call it anything but a Webster; I don't see what reason they would have to change the name of it. . . . I think if I started out to buy a 'Web-

ster' I would not want one that had been called something else some other time. . . . In a

sense it would have to be based upon it," (*i. e.*, the original dictionary written by Noah Webster) "of course; but I think it would have to be more than 'based' on it." Any story may be 'based'

on anything, just take a few facts but not the whole story. This dictionary may be 'based' on the original, but only a few words, giving the same meanings, and a lot of others changed, and still it can 'be based' on it, and would not be the real Webster.

That is the way I understand it. . . . As long as Webster's has always been regarded as the best dictionary, I don't see why they would change the name and call it 'The Crown'" (*Rec. vol. I*, fols. 1743-1758).

Ida Smack, intended to buy the "real Webster's" (*Rec. vol. I*, fol. 1717). "I thought it was one and the same thing," as the dictionary of established reputation (*Rec. vol. I*, fol. 1418). She relied on the name "Webster" as an assurance of quality. "I supposed the name was all that was necessary" (*Rec. vol. I*, fol. 1419). "I always felt that you could rely on Webster's Dictionary, but when I found I did not have the real book I lost all confidence in it" (*Rec. vol. I*, fol. 1424). In buying she expected to get a book "with a reputation" (*Rec. vol. I*, fol. 1444).

Richard W. Geldert, bought upon the good reputation of Webster's Dictionary. "I expected the unabridged edition of Webster's Dictionary" (*Rec. vol. I*, fol. 1407). "I expected an up-to-date one" (*Rec. vol. I*, fols. 1410-1411). "I thought it was one and the same thing" as the Webster's Dictionary of which he had previously known (*Rec. vol. I*, fol. 1405). He had never heard of the Crown Dictionary

Charles J. Timms, bought defendant's book without examination, relying on the reputation of Webster's Dictionary. "I only knew of one dictionary as Webster's" (*Rec. vol. I*, fols. 1368-1369, 1875.) "I thought there was only one publisher" (*Rec. vol. I*, fol. 1375). He was attracted to buy by "the name Webster" (*Rec. vol. I*, fol. 1365), and because: "I considered the name 'Webster' as being the best book published in the way of a dictionary" (*Rec. vol. I*, fol. 1365). "I thought it was the real Webster Dictionary brought right up to date" (*Rec. vol. I*, fol. 1367).

E. Louise Burlingham testified:

"I expected to get the Webster's Dictionary, published by the original publishers of Webster's Dictionary. . . . Because I considered that dictionary the best dictionary published" (*Rec. vol. I*, fol. 1263).

She bought without examination believing the book reliable because of the name and reputation (*Rec. vol. I*, fols. 1249, 1251, 1257).

"I thought it was the famous Webster's Dictionary" (*Rec. vol. I, fol. 1252*). She believed the book was the original Webster's Dictionary revised and brought up to date by the same publishers who had continuously revised the book and who were the successors of Noah Webster's estate (*Rec. vol. I, fols. 1272-1277*). She had never heard of the Crown Dictionary and did not intend to buy it" (*Rec. vol. I, fol. 1255*).

Thomas F. Foley testified that he

"intended to buy a Webster's Dictionary . . . I was under the impression that all Webster's dictionaries were the same. . . . I did not examine it before purchasing, taking it for granted that it was a Webster's Dictionary. . . . Because of its name. . . . I was under the impression that any book bearing the name of 'Webster' was worth ninety-eight cents" (*Rec. vol. I, fols. 1115-1121*).

The book Mr. Foley purchased contained the explanatory statement required by the preliminary injunction, but it was not noticed by him, and did not prevent deception (*Rec. vol. I, fols. 1147-1148, 1227*).

Edward J. McMahon testified that he bought defendant's book "on the reputation of the Webster's Dictionary" (*Rec. vol. I, fols. 1218, 1209-1212*). "It had the effect of making up my mind that I would buy one" (*Rec. vol. I, fol. 1213*). "I thought I was buying a Webster's Dictionary" (*Rec. vol. I, fol. 1220*). "I merely went by the reputation of Webster's Dictionary; it had a high reputation and I didn't know there was more than one firm publishing it" (*Rec. vol. I, fol. 1223*). "I thought there was only one publisher of 'Webster's dictionaries'" (*Rec. vol. I, fol. 1226*). "If I knew there had been any question of its being a Webster's Dictionary at the time, I would not have purchased the book at all" (*Rec. vol. I, fol. 1230*). He believed defendant's book was abridged from the current unabridged dictionaries (*Rec. vol. I, fols. 1237-1238*).

William W. Newberry, a banker of St. Louis, bought defendant's book from the *St. Louis Post Dispatch*, believing it to be the standard Webster's Dictionary of good reputation. He bought it because it was advertised as a Webster's

Dictionary (*Rec. vol. I, fol. 1610*). "Had it been any other dictionary I probably would have paid no attention to it at all" (*Rec. vol. I, fol. 1611*). The name "Webster" meant to him "a reliable and accurate dictionary" and "one of authority" (*Rec. vol. I, fol. 1613*). "It is connected in my mind with the original Webster, and the one that we learned to respect in school" (*Rec. vol. I, fol. 1616*). "I expected to get a dictionary that was either edited, revised or published by the same interests that put out the dictionary of thirty years ago" (*Rec. vol. I, fol. 1620*). He said he would not have the same confidence in a new abridgement of the old dictionary made by new interests (*Rec. vol. I, fols. 1620-1625*).

Charles D. Bond, who was in the general subscription business testified that he canvassed for the "Success Magazine" offering a copy of Webster's Inter-Collegiate Dictionary as a bonus with subscriptions; that he thought the book was one of the Merriam Company's dictionaries, and that he took a subscription and sold a copy of the book with that understanding on his part, and with the same understanding on the part of the purchaser. He testified:

"Q. 10. Who did you think was the publisher of the Webster's Inter-Collegiate Dictionary thus offered as a premium? A. G. & C. Merriam Company.

"Q. 11. What made you believe that? A. I had not known of any other dictionary publisher of that name, that is, any other publisher publishing a dictionary by that title.

"Q. 12. By what name? A. Webster's Inter-Collegiate Dictionary.

"Q. 13. What part of the title made you think the Merriams were the publishers of that book? A. 'Webster's'". *Rec. vol. I, fol. 408*.

He sold the book to Dr. Boynton, who was also called as a witness.

Walter J. Boynton, a doctor of dental surgery testified (*Rec. vol. I, fols. 719-747*), that he had owned a copy of Webster's Dictionary since 1888; that he remembered using

Webster's Dictionary when a boy at school and that for the last sixteen years he had known G. & C. Merriam Company as the publishers of Webster dictionaries. He subscribed for the *Success Magazine* and obtained Webster's Inter-Collegiate Dictionary as a bonus. He asked Mr. Bond at the time: "Is it published by the G. & C. Merriam Company? He says, it must be; it is a Webster's Dictionary" (fol. 727). . . . "Q. What particular part of the title of that dictionary brought the Merriam Company to your mind? A. The term 'Webster'" (fol. 731).

The Webster's Inter-Collegiate Dictionary here referred to is one of the books enjoined in the Saalfeld suit.

Edward Gash, a traveling salesman, bought one of defendant's dictionaries from the *New York American* (Rec. vol. I, fols. 1079-1108). He had known of Webster's dictionaries since the time he was at school. He regarded Webster's Dictionary as a standard dictionary: He testified:

"Q. 11. Please state the circumstances under which you bought this book, including what you intended to buy and what you thought you did buy and the consideration which induced you to make the purchase. A. I bought it on the strength of the word 'Webster' and thought it was a very cheap book at the price.

"Q. 12. What relation did you think this book had to the Webster's dictionary of which you had previously known? A. I thought it was the same book, as far as my knowledge of the dictionary goes.

"Q. 13. Did you know the specific name of the concern which published the Webster's Dictionary which you had known since you were at school and which you say you have regarded as a Standard Dictionary? A. I did not.

"Q. 14. Just what do you mean when you say you bought this book on the strength of the word 'Webster'? A. Of the reputation of the name 'Webster.'

"Q. 15. Then if I understand you correctly you thought this book which you bought from the *New York American* was the book which had the reputa-

tion which is attached to the Webster's dictionaries which you have known as standard authority. A. That is correct " (*Rec. vol. 1, fols. 1083-1085*).

He further testified :

" I wanted a genuine Webster's Dictionary, and I thought that is what I was buying.

" x-Q. 23. Well, what do mean by a genuine Webster's Dictionary? A. A dictionary known as a Webster's Dictionary when I was a boy " (*fols. 1091-1092*).

" x-Q. 21. As a matter of fact do you care who the publisher is? A. Well, not as long as it is a dictionary, but the word ' Webster ' would carry it a great way in my belief " (*fol. 1094*).

" x-Q. 28. You have spoken several times about having been attracted to the book by the reputation of the name ' Webster ' ; you meant by this I suppose the reputation of the editor Noah Webster who originally compiled the great unabridged dictionary? A. I was attracted by the name of ' Webster, ' ' Webster's Dictionary. '

" x-Q. 29. What made the name ' Webster ' attractive to you? A. Because I used it as a boy and I know that Webster's was the standard dictionary as far as my belief.

" x-Q. 30. What made you think that the dictionary you used in school was the standard dictionary? A. I have no belief that it was the standard dictionary, only that it was used in school and was the ' Webster's Dictionary ' (*fols. 1098-1099*).

Re-d. Q. 35. You stated that you bought the book without examining what was in it. What was there about it that convinced you that you wanted it? A. Why the word ' Webster ' " (*fol. 1101*).

John Paul Catherine, a clerk, purchased a copy of defendant's dictionary from the *New York American*. He testified in part :

" Q. 9. What was there about the advertisements that attracted you to make this purchase? A. I saw an opportunity of procuring an up-to-date Webster's Dictionary at a cheap price.

"Q. 10. Did you examine the dictionary at or before the time you bought it? A. No, sir.

"Q. 11. Upon what did you rely as an assurance that it was a good and accurate book worth buying? A. I relied on the name of 'Webster's' Dictionary.

"Q. 12. Did you know at that time the name of the publisher of the Webster's Dictionary of which you had previously known and which you say you regarded as a standard authority? A. No, sir.

"Q. 13. Did you know at that time whether there was more than one concern issuing dictionaries under the name of 'Webster's' dictionaries? A. No, sir.

"Q. 14. At that time had you ever heard of a dictionary entitled the 'Crown' Dictionary? A. No, sir" (*Rec. vol. I, fols. 1389-1390*).

" . . . Q. 20. Did you find the book completely satisfactory in use? A. I was somewhat disappointed in the book, as I found many words that I was anxious to learn the definitions of were not there; for example, on the first page they print that it is based upon the unabridged dictionary, and upon looking for the definition of the word 'unabridged' I fail to find it in this book. Another very common word I fail to find there is 'inopportune'; there were many others that I don't recall. . . .

"Q. 22. Did the fact that it was offered by a newspaper in connection with a coupon scheme have any effect upon your mind? A. Yes, it did. I thought that the *New York American* with their opportunities were giving us a bargain" (*Rec. vol. I, fols. 1393-1395*).

H. M. Condit, Secretary of The Stationers Board of Trade of New York City, testified, that seeing an advertisement of Webster's Imperial Dictionary, which is the book published by the Saelfield Publishing Company, he wrote direct to the Merriam Company for a quotation of the price of this dictionary, thinking they were the publishers of the book. He "thought it best to go direct to headquarters, viz., to the Merriams, with a view of getting the best and lowest price possible quoted" (*fol. 1554*).

B. PUBLISHERS, BOOKSELLERS AND LITERARY MEN.

Isaac K. Funk, president of Funk & Wagnalls Company, the publishers of the well known "Standard Dictionary", testified on behalf of complainant (*Rec. vol. I*, fols. 1448-1468). He testified in substance that in the year 1890 his Company took steps to issue a revised edition of Webster's Dictionary of 1847, upon which the copyright had expired, under the title, "Revised Webster's Dictionary", and that they abandoned their intention of using that name because: "Shortly after beginning we abandoned it because we determined to make a new dictionary bringing it fully down to date; and it seemed to us that it was not wholly fair to use the name of another dictionary, which had a market value for our own production" (fol. 1452). Dr. Funk testified to the very great reputation of the Webster dictionaries of G. & C. Merriam Company, whom he said he had known as publishers of Webster dictionaries for fully a third of a century up to that time (fol. 1455). He further testified:

"Q. 16. Has your experience in the dictionary business been such that you are able to say whose book is meant by the term 'Webster's Dictionary' as used by the general public to-day? A. I think that ninety-nine out of a hundred persons would think that it is meant the work that is published by G. & C. Merriam.

"Q. 17. Are you aware that in recent years there have been quite a number of dictionaries issued in this country using the name 'Webster' in their title which have not been published by G. & C. Merriam Company? A. Yes, I am.

"Q. 18. In view of that fact, do you still think that Webster's Dictionary means the Merriam Company's dictionaries in the public mind? A. In the mind of the general public, yes.

"Q. 19. Have any of these so-called Webster dictionaries issued by publishers other than the Merriams acquired or do they now possess the reputation and authority which you have said Webster's Dictionary possesses? A. No" (fols. 1456-1458).

"x-Q. 24. It is alleged in the complaint and an admitted fact in this case that Noah Webster, the compiler of the 1828 Webster Dictionary which you have referred to as the original Webster, died in 1843, and that the 1847 edition was not completely prepared by him. Do you think that the 1847 edition was properly called 'Webster's dictionary'?"
A. I do.

"x-Q. 25. Do you think that a dictionary based on the 1847 edition of Webster's dictionary is properly called a 'Webster's' dictionary? A. I think not to day, in view of the many additions that have been made to the Webster dictionary from that time to the present and the impression that the word 'Webster' makes on the public mind.

"x-Q. 26. Do you think that the name 'Webster' is associated in the public mind with the author of the dictionary or the publisher? A. I think *it is associated with the work*, that is, the dictionary of to-day, which is recognized by the name 'Webster'" (fol. 1463-1464).

"x-Q. 29. I suppose you think a book which is largely new and different although based on the 1847 Webster, could not properly be called a 'Webster's' dictionary? A. I think not; if it does not come down in the regular line" (fol. 1466).

Irving Putnam, of the firm of G. P. Putnam's Son of this City a publisher and bookseller of long standing, testified for complainant (*Rec. vol. I, fols. 1558-1604*). He testified that Webster's Dictionary as a work of reference had the highest standing of any in this country (fol. 1560); that the Merriams were the publishers of the book he referred to, and that no dictionary published under the name of Webster by any one else had such standing and reputation (fol. 1561); that an order for Webster's Dictionary given by an ordinary purchaser means a Webster's Dictionary of the Merriam series, (fol. 1563); that purchasers always expected the latest edition of the particular series (fol. 1566); that the average purchaser regards a small Webster's Dictionary as an abridgment of the large Webster's Dictionary and that all small Webster diction-

aries are based absolutely upon the larger book (fols. 1567, 1569). Mr. Putnam also testified (*Rec. vol. I*, p. 394):—

“ Q. 21. What effect upon the probable sales of a new dictionary would the use of the name ‘Webster’ as a whole, or a part of the title, have? A. It would give it a distinct advantage before the public.

“ Q. 22. In what way? A. The name ‘Webster’ being in the minds of the general public in this country connected with the series of books that has been to them for three generations the standard authority in all matters pertaining to the English language, a dictionary offered to the average person with the name Webster on, would mean that the book was connected with this great authority for which they had always had respect, and on that account, of course, the average intended purchaser would be much more apt to buy a book with the name of ‘Webster’ on it, than with a name that meant nothing to them. For instance, today the name ‘Worcester’ on a dictionary would be of comparatively little value commercially, for general sale, although fifty years ago Worcester’s dictionary and the name ‘Worcester’ as connected with dictionary material stood far higher before scholars and the general public than did Webster. Worcester’s dictionaries, however, have not been revised and developed during the last thirty years, and the consequence is that the word ‘Worcester’ does not now carry with it any respect or prestige; ‘Webster’ on the contrary, having been connected with a series of books not only kept before the public for the last half century, but, constantly developed, enlarged and revised and brought up-to-date by an enormous expenditure of time and scholarship, stand before the public in such a light that they have increased confidence and respect for the series, and naturally assume that anything in the nature of a dictionary having the magical word ‘Webster’ on it, is entitled to their confidence ” (fols. 1573–1578).

“ The value of Webster today is something quite apart from the value of Webster as connected with the various editions of Webster’s dictionaries long out of copyright. The name ‘Webster’ today in my opinion, stands for a series of reference books

that have been built up from what was merely a germ in the form of the original 'Websters' dictionary. These books have intended to keep pace with the rapid development of the English language and their value as authorities depends upon the accuracy and scholarship with which they have kept this pace" (fols. 1581-1582).

Mr. Putnam also explained the difference between reprints of ordinary literary works upon which copyright had expired and reprints of dictionaries and other reference works as follows (p. 397):

"It seems to me that is a very decided difference. The copyright having expired, there is no injury to reputation or prestige in reprinting a volume of Longfellow's Poems, or a story of Edgar Poe, or a volume of essays by Irving. If the material is reprinted correctly and without garbling it, there can be no harm, except the commercial competition of the sale of such reprints with the former copyrighted editions. It is quite a different matter when a reprint is made of an early edition of a book of reference. Such reprint issued with a current date, unless it is emphasized in the clearest way that the book is but a reprint of an edition half a century out of date, cannot but do injury to the sale of the legitimate revised editions and is, as a matter of course, a gross deception of the public that buy it. It is quite evident that the use of the word 'Webster' is to take an unfair advantage and to use unfair competition with the publishers of the modern work; otherwise, some other name would be used. If it was meant merely to make such use as under the law was permissible, that is, to make use of material of which the copyright has expired, it would have been easy to indicate that. But, this of course, would have rendered the book so issued of no commercial value; the only commercial value that attaches to it, is from the connection in the mind of the public of the word 'Webster' with the modern series of Webster's dictionaries" (fols. 1586-1589, see also *Mead*, fols. 1901-1906; 1919).

Mr. Putnam also said that most of the plain people have been to school and used Webster dictionaries in the various

grades, and here they acquired knowledge of Webster's Dictionary as a series of books (ibid. 195f).

William E. Clarke, a bookseller in Boston, who had been selling dictionaries for over forty-five years, testified, that the name "Webster's Dictionary" means to the average customer the latest edition published by G. & C. Merriam Company. "I don't remember any time when it was not true since I have been in the business". He had always filled orders for Webster dictionaries with Merriam books. He testified that an order for Webster's Dictionary today would not be properly filled by a copy of the 1827 edition; that the reputation of Webster dictionaries has a decided effect upon their sales and that no books could now be sold in the market as a Webster's Dictionary which would not get the benefit of the reputation of the Merriam Company's copyrighted editions of Webster's Dictionary. (See vol. I, file. 1957-1958.)

John Quincy Adams, a publisher located in Boston, whose concern is the New England sales office for Complin and's Webster dictionaries, testified to the great reputation of Complin and's Webster dictionaries; that no order given today for a Webster's Dictionary would not mean a copy of the edition of 1827, which "would in ninety-nine cases out of a hundred disappoint the customer"; that the Complin and's Webster dictionaries have a very large use in the school systems of America, and that his own office supplies many of the large school systems in New England with the Merriam Webster; that the current editions of Complin and's books are the books with the high reputation, and that in his judgment the present-day reputation of Webster dictionaries "comes largely on editions published since 1827." (ibid. 1957-1958.)

Mr. Adams also said (See. vol. I, p. 224):

"From my knowledge of the Dictionary business during ten years, I should say that any book published by others than the Springfield Merriam would profit tremendously by the use of the Webster name and reputation.

that the name Webster's Dictionary today means only the dictionaries of complainant, and that even a historically genuine copy of an obsolete edition upon which the copyright has expired is not today the book intended when the name Webster's Dictionary is used. Such testimony was given by *Andrew S. Draper*, Commissioner of Education of the State of New York, who also states that the complainant's Webster dictionaries had been approved for school use in that State. (*Rec. vol. I*, pp. 500, 501); by *George H. Martin*, former Secretary of the Massachusetts State Board of Education (*Rec. vol. I*, pp. 457, 464); by *Edwin D. Meade*, Director of the World's Peace Foundation in Boston, and for twenty-five years Director of the Old South Historical Work (*Rec. vol. I*, pp. 472-484); by *Horace G. Wadlin*, Librarian of the Boston Public Library (*Rec. vol. I*, pp. 467-472); and *Henry H. Van Dyck*, formerly a proofreader and later a lawyer and editor. (*Rec. vol. I*, pp. 332-40).

The fact that citations in legal opinions relying upon "Webster's Dictionary" or merely "Webster," do refer to complainant's copyrighted books is shown, without contradiction, by the testimony of Henry Van Dyck, who was for many years an editor and proof-reader upon the American & English Encyclopedia of Law. It was his duty to verify all such citations and he therefore testified from first-hand knowledge that such judicial references to Webster's Dictionary invariably mean complainant's current Webster's Dictionary. (*Rec. vol. I*, fols. 1325-1346.)

Further on the subject of deception of purchasers, and secondary meaning of the name Webster, these witnesses testified:

"x-Q. In your opinion does the ordinary purchaser of a small abridged Webster's dictionary think about the publisher? A. He perhaps does not think who the publisher is, but he most certainly has in mind a 'Webster' dictionary belonging to the series of well known Webster's dictionaries, of which he has heard and read from childhood. . . . They know the Webster dictionaries from the unabridged of '64 to the present time, and know them

as authoritative." (*Haymaker, Rec. vol. I, fols. 1532, 1545.*)

"I don't think the average purchaser looks very carefully for the name of the publisher or the origin of the book they are buying; I think they assume that the Webster dictionary is one of the series of Webster books which they have grown up to consider as the great authority on spelling and definitions.

x-Q. 29. Do you think that the average purchaser of such a book considers at all the origin of the book or its publisher? A. Not very much; he considers the name of it much more than the publisher." (*Putnam, Rec. vol. I, fols. 1570, 1571, 1594.*)

"Only a portion of the customers remember the actual name of the publisher of the book. . . . The average purchaser does mean such edition or editions" (*i. e., those published by the Merriams*) (*Clarke, Rec. vol. I, fols. 1148, 1149.*)

"I doubt whether one such man in ten knows the publisher of the Standard Dictionary. Most people know that the Merriams have always been the publishers of the Webster dictionaries—most scholarly people, I mean. I doubt whether the man in the street remembers that the Webster's dictionaries are published by the Merriams. . . . I think the fact that Merriams' name was not on the imprint would not affect lots of people as thinking they were getting what we ordinarily speak of as Webster's dictionaries when we mean the Merriam editions" (*Mead, Rec. vol. I, fols. 1924, 1925, 1927.*)

"I think the public generally understand Webster's Dictionary to be the original Webster's Dictionary as revised and expanded under the publishers who have had control of that work through a long series of years" (*Wad. in, Rec. vol. I, fol. 1884.*)

x-Q. 27. Do you think the general public when purchasing a Webster's Dictionary think about the publisher at all? A. Sometimes yes, about the publisher; but I always think in accordance with an impression that has been made on their mind by iteration and reiteration of that name 'Webster' in connection with dictionaries. . . . I think that ninety-nine out of a hundred persons would think that it meant the work that is published by G. & C. Merriam" (*Funk, Rec. vol. I, fols. 1463, 1464, 1456.*)

Webster's Dictionary means "the genuine and original dictionary, such as has been used by the Public Schools and professional and literary people, whether they knew the publishers G. & C. Merriam Co. or not" (*Gifford*, fol. 959).

III.

EVIDENCE AS TO LITERARY ORIGIN OF DEFENDANT'S DICTIONARY.

The only evidence offered by defendant to support its defence that its "Crown" Dictionary was based upon Webster's Dictionary of 1847, was the expert opinion evidence of Professor Peck, which was wholly based upon his comparison and markings of the books in question.¹ It was shown upon his cross-examination that his markings were unfair and inaccurate and that he had habitually marked matter as having been copied or paraphrased which afforded not the slightest justification for the claim.² The very matter which Peck selected as showing that defendant's book was taken from Webster 1847,³ is conclusively shown to have been taken directly from the old British Empire Dictionary,⁴ and it was further shown that this same matter might equally well have been taken from various other standard English dictionaries and in fact, apparently was in part taken from such dictionaries rather than Webster.⁵ Professor Peck thereupon marked some two hundred pages of defendant's book, the markings purporting to show identities, practical identities and paraphrases with or from Webster's Dictionary of 1847.⁶ From these markings defendant calculated that about 67% of its book was taken directly from Webster's Dictionary. These markings are utterly incorrect, as an actual com-

Peck, Rec. vol. III, pp. 1534 et seq., 1914 et seq.

² *Peck, Rec. vol. III, fol. 6470-6636.*

³ See Defendant's Exhibit C.

⁴ See "Complainant's Red Letter Exhibit."

⁵ Complainant's Parallel Column Exhibit in Answer to Peck's Exhibit.

⁶ See Defendant's Marked Volume Exhibits.

parison of the matter marked by Professor Peck will immediately demonstrate. The following is a comparison of specimen definitions marked in blue by Professor Peck, and asserted by him to be practically identical with and to indicate copying from the 1847 Webster. The additional definition is taken from one of the books in evidence and shows how much greater the similarity is to other British dictionaries.

"ADIT."

Defendant:—"An entrance to a mine more or less horizontal."

Cassell:—"A more or less horizontal entrance to a mine."

Webster:—"A term in mining, used to denote the opening by which a mine is entered, or by which water and ores are carried away; called also the drift."

There is almost no similarity even, much less any identity, between defendant's and Webster's definition. Defendant's definition *could not* have been copied from Webster because it contains a meaning or qualification not given by Webster, viz.:—"more or less horizontal." But these identical words are found in Cassell's Dictionary. In spite of the indications that Webster was not used in this instance, Peck here counts five words toward his percentage of "identities."

"BANNS."

Defendant:—"The proclamation in church of an intended marriage."

Cassell:—"Proclamation in church of an intended marriage."

Webster:—"In the plural, the words *bans* denotes notice of a marriage proposed, or of a matrimonial contract, proclaimed in a church or other place prescribed by law."

Note the absolute identity with Cassell, and the total difference from Webster, including the spelling. The three

unavoidable and non-significant words "marriage," "in," and "church" are the only "identities" (*sic!*), but Peck counts eight (8) towards his percentage.

"CALIPASH, and CALIPEE."

Defendant:—"CALIPASH, *n.* The part of a turtle belonging to the upper shell inclosing a dull greenish gelatinous substance."

"CALIPEE, *n.* The part of a turtle belonging to the lower shell, inclosing a light yellow gelatinous substance."

Cassell:—"CALIPASH, *n.* That part of a turtle next to the upper shell, containing a dull green gelatinous substance."

"CALIPEE, *n.* That part of a turtle which belongs to the lower shell, containing a light yellowish gelatinous substance."

Webster:—"CALIPASH, } *n.* That part of a turtle which
CALIPEE, } belongs to the upper shell is called
calipash, and that part which belongs to
the lower shell *calipee*."

Note the almost absolute identity with Cassell, including matter that *could not* have been derived from Webster, to wit, "a dull greenish gelatinous substance," and "a light yellow gelatinous substance." Copying from Cassell, and not from Webster, is here indicated. Peck, however, counts twenty (20) towards his percentage.

"ALTIMETER."

Defendant:—"An instrument for measuring altitudes trigonometrically."

Cassell:—"An instrument for measuring altitudes trigonometrically."

Webster:—"An instrument for taking altitudes geometrically, as a quadrant."

Note that the defendant's definition is absolutely identical with Cassell's, and varies from Webster in every

respect where Cassell varies, showing that Cassell rather than Webster was used. If Webster were the source, then useless changes such as "measuring" instead of "taking," and "trigonometrically" instead of "geometrically" would not have been made, for they neither shorten nor improve the definition. The only identity is in non-significant words, whose use could not well be avoided. But Peck counts six towards his percentage, including the words from Cassell which are not in Webster.

"HAMMOCK."

Defendant:—"A swinging bed usually made of network or canvas."

Cassell:—"A swinging or suspended bed made of canvas or network."

Webster:—"A kind of hanging bed."

Only the one word "bed" is common to defendant and Webster, while every word and meaning is found in Cassell. But Peck counts three (3) towards his percentage.

"SARDINE."

Defendant:—"A species of pilchard, abundant in the Mediterranean, and preserved in oil for exportation."

Cassell:—"A fish resembling a pilchard, abundant in the Mediterranean, and exported preserved in oil."

Webster:—"A Mediterranean fish of the herring family."

Note the almost complete identity with Cassell, both in words and sense; also the almost total difference of Webster, both in words and sense. "Mediterranean" is the only word common to the two books. Peck, however, counts eight (8) towards his percentage of so-called "identities," though the whole definition obviously came from Cassell, and not a word of it from Webster.

"TROPIC."

Defendant:—"One of the small circles of the celestial sphere, situated at each side of the equator, at a distance of $23^{\circ} 28'$, and parallel to it."

Cassell:—"One of the two small circles of the celestial sphere, situated on each side of the equator at a distance of $23^{\circ} 28'$, and parallel to it."

Webster:—"A name given to two parallels of latitude, one (the tropic of Cancer) being $23^{\circ} 28'$ north of the equator, and the other (the tropic of Capricorn) being $23^{\circ} 28'$ south of the equator."

Cassell, not Webster, is the obvious source of defendant's definition. But Peck counts twenty-one (21) more "identities" toward his percentage.

The foregoing are merely typical instances of what Peck calls "practical identities." They can be multiplied indefinitely. This is the basis of his *opinion*. This is what the blue ink markings *really* mean. They do not mean what Peck says they mean. The books do not bear him out. His *opinion* has no basis of fact.

The whole of these blue ink markings should be disregarded, because of demonstrated unreliability. They constitute almost one-half of Peck's alleged percentage of "identity between the two books."

Professor Peck marked in the books with black ink what he said was matter paraphrased from Webster. Inspection of the books themselves will show that there is absolutely no basis for this claim. There are no significant words or ear-marks to indicate paraphrasing; and it merely appears that both dictionaries have defined the same word, but in widely variant language, and that any dictionary might in this way be termed with equal force a paraphrase of any other dictionary. A few typical instances of what Pro-

fessor Peck has marked as paraphrases, indicating that defendant's book was based on Webster, are the following :

“ ABBÉ.”

Defendant :—“ An ecclesiastic devoted to literature.”

Cassell :—“ An ecclesiastic without a cure ; a cleric in minor orders ; generally a mere title without any definite office or responsibility.”

Webster :—“ In a monastic sense, the same as an *abbot* ; but more generally, a title in Roman Catholic countries, without any determinate rank, office, or rights. The abbés are numerous, and generally have some literary attainments ; they dress as academics or scholars and act as instructors, in colleges and private families, or as tutors to young gentlemen on their travels ; and many of them become authors.”

“ ALIMENTARY CANAL.”

Defendant :—“ The great duct which conveys food to the stomach and carries off solid excreta.”

Cassell :—“ The great tube or duct conveying food to the stomach, and carrying off solid excreta from the system.”

Webster :—“ The alimentary canal, in animal bodies, is the great duct or intestine, by which aliments are conveyed through the body, and the useless parts evacuated.”

“ ALIMONY.”

Defendant :—“ Means of living ; an allowance made by decree of court to a wife out of her husband's estate on separation, or pending an action for the same.”

Cassell :—“ The proportional part of a husband's income allowed a wife for her support on legal separation, or for other causes.”

Webster:—"An allowance made for the support of a woman, legally separated from her husband. The sum is fixed by the proper judge, and granted out of the husband's estate."

"BABOON"

Defendant:—"The popular name of a large division of monkeys, which inhabit Africa and Arabia, and are characterized by a long dog-like snout, large canine teeth, great head, rudimentary tail, large callosities on the hips, and capacious cheek pouches; an epithet of contempt."

Cassell:—"The popular name of a large division of monkeys, with long dog-like snout, great canine teeth, large natal callosities, and capacious cheek-pouches. Used as an epithet of abuse."

Webster:—"A name common to several of the larger species of monkeys, belonging to the genus *Simia*, in the class *Mammalia*, and order *primates*, according to the system of *Linnaeus*; but more recently considered as forming a distinct genus in the order *Quadrumana* and family *Simiæ*. Baboons have short tails; a long face; a broad high muzzle; dog-like tusks, or canine teeth; and naked callosities on the buttocks. They are found only on the eastern continent and adjacent islands."

"CALOTYPE."

Defendant:—"A photographic process in which the image is received on paper prepared with iodide of silver. Also called *talvotype*, from the name of the inventor."

Cassell:—"Pref. [*calo-* and *type*] [*Talbotype*]" "A process invented by Fox Talbot of producing a latent image upon sensitized paper; it is the basis of the photographic process."

Webster:—"A name given by Mr. Fox Talbot to his invention for making pictures on paper or other substances, by the agency of light."

"CAECUM."

Defendant:—"The blind gut; a pouch-like appendage of the large intestine, having one end closed."

Cassell:—"The blind gut; any blind tube."

Webster:—"In *anatomy*, the commencement of the large intestine, forming a *cul-de-sac*, or closed tube, before the insertion of the small intestine, and having near its closed extremity a small process or appendage called the *vermiform appendage* (*appendicula vermiformis*). The term *caeca* (plural) is applied to small lateral appendages of the intestinal canal, similar to the vermiform appendages, as in birds and fishes."

"CALUMET."

Defendant:—"The tobacco-pipe of the North American Indians smoked as a symbol of peace, or to ratify treaties."

Cassell:—"The tobacco-pipe of the North American Indians, used as a symbol of peace and friendship."

Webster:—"Among the *aboriginals of America*, a pipe, used for smoking tobacco, whose bowl is usually of soft red stone, like marble, and the tube a long reed, ornamented with feathers. The calumet is used as a symbol or instrument of peace and war. To accept the calumet is to agree to the terms of peace, and refuse it, is to reject them. The calumet of peace is used to seal or ratify contracts and alliances, to receive strangers kindly, and to travel with safety. The calumet of war, differently made, is used to proclaim war."

Defendant's whole proposition that its book is based on Webster rests upon Professor Peck's statement that definitions like the above prove that defendant's dictionary was taken from Webster's Dictionary.

Percentages of Identity.

The percentages of identity between defendant's book, and various other specified dictionaries, as shown by Complainant's Parallel Column Exhibit, were calculated by defendant's witness Watrous (*Rec. vol. III*, pp. 2021-2039).

The most important of these percentages, if any are important, is the percentage of defendant's book which is identical with Webster. Mawson testified for complainant that only 45% of the words of defendant's book can be found in Webster, and these not consecutively, but much scattered. Watrous testified for defendant, *on his direct examination*, that 52% of defendant's book is found in Webster (*Rec.*, p. 2023, Q. 14). But *on cross-examination*, he testified that this result was reached *by using a different and smaller denominator* than he used in calculating the other percentages. In calculating the Webster percentage, he used a smaller denominator so as to make the percentage larger; in comparing the other dictionaries, he used a larger denominator, so as to make the percentage smaller (*Rec.*, pp. 2034-2038). This witness admitted:

"x-Q. 128. The Webster percentage as given by you then does not represent the percentage of defendant's entire book, as compared with Webster?
A. No" (*Rec. vol. III*, p. 2038).

What a farce it is to call such an obvious subterfuge "rebuttal."

Taking the figures given by this witness, and using the correct denominator—the same one used by him in calculating percentage of identities with other dictionaries, the Webster percentage of identical words is 45%, exactly what complainant's witness Mawson said it was (*Rec.*, pp. 2035, 2036). This witness also testified that 61% of defendant's book was identical with the English Cassell's Dictionary, exactly what complainant's witness Mawson said it

was (*Rec.*, p. 2022). He also testified that there was an average percentage of identity between defendant's book, and six miscellaneous dictionaries, amounting to 31.49%. Mr. Mawson had fixed it at 38% (*Rec.*, p. 2026).

Defendant thus corroborates Mr. Mawson in the position that there is a large amount of similarity and identity common to all dictionaries, so that its mere existence is no proof that one was copied from another. Common errors or peculiarities, or a considerable amount of identical consecutive language, must be found to raise even an inference of copying. Defendant's expert, Prof. Rolfe, testified that two identical definitions "might be made independently by two men," and that "similarity of language is not a reliable test; or even identity of language, as to the source of a book." "The identity must be in some significant particular, some significant word, rather than a common word" (*Rec.*, pp. 2006; 1995).

What has become of the defendant's alleged proof that its book is "based" on Webster?

Peck's New Marked Volume Exhibits.

Prof. Peck, in rebuttal, marked two hundred pages of defendant's book in red, blue, and black ink, to indicate what he termed "identities," "practical identities" and "paraphrases," with or of corresponding matter in Webster. He testified that he counted all the words so marked and that "the correct amount of identity between the two books" is 67.6%, and that Mawson's estimate of 45% was not correct. (*Peck, Rec.*, pp. 1955-1958. Qs. 31, 32). That looks like rebuttal. But it is not true. The witness on cross-examination admitted that it is not true.

x-Q. 82. The question is, do the words which you marked in any way upon the two hundred pages constitute as much as approximately 67.6% of all the matter contained upon those pages? A. No; that represents 67.6% of what I regard as the Webster matter on those pages.

x-Q. 83. Then you do not mean to testify that 67.6% of defendant's entire volume was or might have been derived from Webster? A. Why, no;

where the titles were not in Webster, or even so in our book, it could not be.² *Pack's* reply to *Dr. Bee*, p. 127. Also *Bee*, pp. 128-129.

The witness could not, and did not, state what portion of defendant's book was thus excluded from his calculation (*Pack*, 2 Qs. 62-63, *Bee*, pp. 127-128).

This is the same advantage asserted to by the witness Watson, who used a different and smaller dictionary to increase the alleged Webster percentages. Watson based his calculations upon defendant's entire book. *Pack* based his calculations upon only an unmarked part of defendant's book. Of course, this method produced large figures, but those figures mean nothing. *Pack* says the unmarked portion of defendant's book contains 6,000 titles and definitions, of which 1,200 titles are not contained in or defined in any form in the 1847 edition of Webster. The amount of matter in these definitions does not appear, but it is plain that approximately 20% of the defendant's book was wholly excluded from *Pack's* calculations (*Pack*, Q. 25, *Bee*, p. 127). But even this twenty per cent. (20%) does not represent all the discount which must be made from *Pack's* figures. These marked volumes are all of a piece with *Pack's* former "Exhibit C," and contain the same kind of false and misleading markings which have been illustrated.

Apparently, the principal aim was to get plenty of ink upon the books. Thus, title words and the designation of the part of speech as "adj.," "n.," "adv.," or "v." are habitually marked in red, although no part of the definition of such words are ever claimed to have been taken from Webster. These instances have not been counted, but are very numerous. Seventy-four (74) such instances appear under the letter "A" alone. The ink makes a very striking appearance, but affords no evidence that Webster was used. *Pack* himself admits this and that it would have been large and to have made such marks. How much the contributed to *Pack's* percentages does not appear (*Bee*, 106-107).

Pack says that in getting his alleged percentages (6, 00%)

Office Supreme Court, U. S.

FILED

MAR 13 1915

JAMES D. MAHER

CLERK

Supreme Court of the United States,

OCTOBER TERM, 1914—No. 217

G. & C. MERRIAM COMPANY,

Complainant-Appellant,

vs.

SYNDICATE PUBLISHING COMPANY,

Defendant-Appellee.

Brief on Behalf of Defendant-Appellee.

With Reference Appendix of Facts in Volume II.

Vol. I.

HUGH A. BAYNE,

Counsel for Defendant-Appellee.



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**Index of Cases Cited in Defendant-Appellee's
Brief.**

	PAGE
<i>Albany Wrapper Paper Co. v. Hoberg Co.</i> , 102 Fed., 157; 109 Fed., 589.....	96
<i>American, etc. Watch Co. v. U. S. Watch Co.</i> , 173 Mass., 85.....	80
<i>Baker, Walter & Co. v. Gray</i> , 192 Fed., 921	132, 136
<i>Beadleston & Woerz v. Cooke Co.</i> , 74 Fed., 229.....	96
<i>Black v. Ehrich</i> , 44 Fed., 793.....	52, 87, 92
" <i>Camel Hair Belting</i> " case.....	73, 80
<i>Canal Co. v. Clark</i> , 13 Wall., 311.....	122
" <i>Castoria</i> " cases.....	53, 72, 79, 86, 121, 123
" <i>Castle Album</i> " Case.....	85, 112, 113
<i>Cellular Clothing Co. v. Maxton</i> (1899) App. Cas., 326.....	58, 67, 82, 84

	PAGE
<i>Centaur v. Heinsfurter</i> , 84 Fed., 955.....	53, 72
<i>Centaur v. Marshall</i> , 38 C. C. A., 413; 97 Fed., 785... ..	86, 121, 123
"Chatterbox" cases	117, 118
<i>Chemical Co. v. Meyer</i> , 139 U. S., 540.....	122
<i>Coats v. Merrick Thread Co.</i> , 149 U. S., 562	122
<i>Columbia Mill Co. v. Alcorn</i> , 150 U. S., 460	96, 120
<i>Dover Stamping Co. v. Fellows</i> , 163 Mass., 191	80
<i>Elgin Watch Co. v. Illinois Watch Co.</i> , 179 U. S., 665.....	79, 81, 86
<i>Estes v. Leslie</i> , 27 Fed., 22.....	117
<i>Estes v. Williams</i> , 21 Fed., 189	117
<i>Estes v. Worthington</i> , 31 Fed., 154.....	117
"Flaked Oatmeal" case, 15 R. P. C., 57.....	70, 75
"Glenfield Starch" case, L. R., 5 H. L., 508	80
<i>Gorham Mfg. Co. v. Emery-Bird-Thayer D. G. Co.</i> , 104 Fed., 243	124
<i>Hommel v. Bauer & Co.</i> , 22 R. P. C., 43....	83
<i>Howe Scale Co. v. Wyckoff</i> , 198 U. S., 118...	125
<i>Kerly on Trade-marks</i>	71, 82, 83
<i>Kipling v. Putnam</i> , 65 L. R. A. 877.....	88
<i>Lawrence Co. v. Tennessee Co.</i> , 31 Fed. 776	96
<i>Ludlow Valve Co. v. Pittsburgh Mfg. Co.</i> , 166 Fed. 26	80
<i>McLean v. Fleming</i> , 96 U. S., 245.....	119, 132
<i>Manufacturing Co. v. Trainer</i> , 101 U. S., 51	96
<i>Merriam v. Famous Shoe Co.</i> , 47 Fed. 411..	36, 212
<i>Merriam v. Holloway</i> , 43 Fed. 450.....	35, 212

<i>Merriam v. Saalfeld</i> , 190 Fed., 927 ; 198 Fed. 369.....	41, 48, 59, 61, 63, 64, 65, 68, 69, 70, 102, 131, 217, 218
<i>Merriam v. Straus</i> , 136 Fed., 477	38, 212
<i>Merriam v. Texas Siftings Co.</i> , 49 Fed., 944	36, 212
<i>Montgomery v. Thompson</i> , 8 R. P. C., 361 ; (1891) App. Cas., 217.....	80
<i>Ogilvie v. Merriam</i> , 149 Fed. 858 ; 159 Fed. 638 ; 170 Fed. 167.....	10, 31, 32, 39, 41, 48, 59, 60, 61, 62, 63, 64, 65, 68, 70, 86, 91, 101, 102, 128, 213, 216
<i>Reddaway v. Banham</i> , (1896) App. Cas. 199 ; 13 R. P. C. 288 ; Reported below, 9 R. P. C. 503 ; 12 R. P. C. 83.....	71, 82
<i>Reed's Cushion Shoe Co. v. Frew</i> , 162 Fed. 887.....	125
<i>Rowley, J. F., Co. v. Rowley</i> , 193 Fed. 390...	131
<i>Rushmore v. Badger Brass Mfg. Co.</i> , 198 Fed. 379	131
<i>Schove v. Schmincke</i> , 33 Ch. Div. 546.....	85, 112
<i>Sebastian on Trade-marks</i> , 5th Ed.....	133

<i>Singer Mfg. Co. v. June Mfg. Co.</i> , 163 U. S. 169.....	73, 75, 77, 79, 123
<i>Stevens Linen Works v. Wm. & John Don Co.</i> , 127 Fed. 950. ..	96
" <i>Stone Ale</i> " case.	80
" <i>Van Der Berg</i> " case, 33 Sup. Ct. Rep. 165	49
" <i>Waltham Watch</i> " case.....	80
<i>Westinghouse Co. v. Wagner Elec. Co.</i> , 225 U. S. 604	131
<i>Worden v. California Fig Syrup Co.</i> , 187 U. S. 516 ..	14, 16, 18, 50

INDEX OF POINTS.

POINT ONE.

	PAGE
The complaint should be dismissed for lack of equity	6-30
A. The inequitable circumstances under which this suit was brought should move a Court of equity to refuse to aid the appellant.....	6-12
B. Within the rule of the California Fig Syrup case the appellant comes into Court with unclean hands. For that reason alone the complaint should be dismissed.....	13-24
C. Appellant has used falsehood and misrepresentation in competition with this appellee.	24-30

POINT TWO.

Brief chronological statement of the principal facts.....	30-48
--	--------------

POINT THREE.

Appellant has failed to prove that it has any rights in the name "Webster's" superior to those of the general public.....	49-116
A. As a matter of law the name "Webster's", having been dedicated to the public, as the name of copyrighted matter, can never be appropriated as a trade name on the theory that it has acquired a secondary meaning..	51-55

B. What is the secondary meaning claimed?.	55-58
C. Whether the alleged secondary meaning exists is purely a question of fact, to be determined solely upon the evidence in this case; in the determination of that fact prior adjudications cannot properly be considered by the Court.....	58-65
D. A "secondary meaning" is a trade mark and exist only where a name, originally descriptive, has wholly lost its descriptive signification	65-81
E. Rules of law governing proof of secondary meaning	81-86
<i>Rule I. What the burden on the appellant is</i>	81-82
<i>Rule II. The utmost difficulty should be put in the way of anyone who seeks to adopt and use exclusively as his own a merely descriptive term.....</i>	82
<i>Rule III. The more clearly descriptive the name, the more difficult it is to make this proof, namely, that it has acquired a secondary meaning.....</i>	82-83
<i>Rule IV. Even though the name indicates one dealer only, among many persons, nevertheless if it retains its primary descriptive meaning among any considerable number of persons it has no secondary meaning</i>	83-85
<i>Rule V. Proof that customers of appellant associate the descriptive name of the article with him does not establish the existence of a secondary meaning.....</i>	85
<i>Rule VI. Every person is charged with knowledge of the fact that any one may publish and sell Webster's work.....</i>	86

F. Main argument on the question of secondary meaning.....	86-116
--	--------

To prove that the generic name of the literary product of a famous author has lost its natural meaning is more difficult than in the case of any other descriptive term and has not, we believe, heretofore been successfully attempted.....	87-90
--	-------

1. *Appellant was not the first user of the title "Webster's Dictionary".....* 90-91
2. *Appellant was not the successor of the original publisher.....* 91-92
3. *The word "Webster's" in the title of a dictionary has uniformly been used as the name of Webster's work in the book for a century, and the only instance of its application to anything else is in the appellant's latest book.....* 92-100
4. *Appellant's use of the name "Webster's" in the title of a dictionary has never been exclusive... ..* 100-104
5. *Synopsis of opinion testimony as to meaning of the name "Webster's".....* 104
6. *Synopsis of letters from persons alleged to have been misled by advertisements* 104-105
7. *Synopsis of testimony of "ordinary purchasers"*
 - (a) *Appellant's 24 witnesses.....* 105-113
 - (b) *Appellee's witnesses* 113-116

POINT FOUR.

Appellant has not brought this case within the facts of any case in which a secondary meaning was adjudicated.....	116-119
--	---------

POINT FIVE.

PAGE

Proof of deceit of careless, lazy buyers of an article is not evidence of existence of secondary meaning or of fraud.....	119-124
--	----------------

POINT SIX.

Unless the appellee's mere use of the name "Webster's" constitutes unfair competition there are no facts proved from which deception by appellee could or did result or from which a fraudulent intent could be inferred	124-131
---	----------------

POINT SEVEN.

No accounting should be ordered in the present case	131-138
--	----------------

CONCLUSION.

See pages.....	138-139
-----------------------	----------------

INDEX TO APPENDIX.
(Being Vol. II of this Brief.)

	PAGE
Full statement of the facts.....	140
Publishers from 1806 to 1847.....	140-144
Publishers from 1847 to 1889	144-157
Publishers from 1889 to date.....	157-167
(a) detailed list of publications.....	162-167
Summary of testimony <i>re</i> advertising of other publishers than the Merriams.....	167-170
Facts showing that "Webster's " as part of the title of a dictionary has uniformly been used as the name of Webster's work in the book.....	170-174
Direct evidence of secondary meaning..	174-176
(a) Opinion testimony	176
(b) Evidence of "ordinary purchasers".....	176-187
Analysis of the testimony of complainant's alleged "average buyers".....	187-190
Analysis of appellee's "ordinary purchasers"	
History of defendant's publication.....	190-196
The appellee's book is honestly named "Webster's New Illustrated Dictionary ".....	196-212
Webster in the Courts	212-219
Opinion of Coxe, J., on motion for preliminary injunction	219-221
Appellant cannot escape responsibility for the false representation on the title-cover of its "Condensed" Dictionary that that Book was its "Twentieth Century Edition," nor for the misstatements made in the advertisements of the St. Louis Republic in September, 1911.....	221

INDEX OF CUTS.Opposite
Page.

1. Advertisement of appellant's so-called "Twentieth Century Edition" in St. Louis competition with defendant..... 26
2. Ditto advertising the "Twentieth Century" as an abridgement of appellant's "New International" 27
3. Appellant's advertisement of its Circle and Monogram Trade-Mark 96
4. Advertisement of appellant's "Twentieth Century Edition" in St. Louis campaign denouncing defendant's dictionary..... 136
5. Appellee's advertisement showing cautionary notice published before appellant sued..... 137

SUPREME COURT OF THE UNITED STATES.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

v.

SYNDICATE PUBLISHING COM-
PANY,
Defendant-Appellee.

October Term, 1914.
No. 217.

**BRIEF FOR SYNDICATE PUBLISHING
COMPANY, DEFENDANT-APPELLEE.**

Statement.

This is an appeal from the affirmance by the Circuit Court of Appeals for the Second Circuit, of a final decree of the District Court for the Southern District of New York dismissing the complaint on the merits with costs.

The appellant and the appellee are publishers of dictionaries.

The appellant, claiming that "Webster's" is its trade-name, sought to enjoin the appellee from using that name in the title of its dictionary, entitled, at one

time, "Webster's New Illustrated Dictionary with U. S. Census and Maps" and entitled, at another time, "Webster's New Standard Dictionary with U. S. Census and Maps," and asked for an accounting of the profits, realized by the defendant from the sales thereof, amounting to from \$50,000 to \$100,000.

The appellee claims that, as a matter of law, the name "Webster's" is a public name in which no one can possess or acquire exclusive or semi-exclusive (secondary meaning) rights, because the name is the descriptive title of Noah Webster's copyrighted lexicographical writings, all of which are in the public domain.¹

Apart from the above legal grounds, appellee claims that, as a matter of fact, the name "Webster's" is a generic name for the literary product of the great lexicographer, Noah Webster; that the name still is in wide public use daily in that sense, and hence is not susceptible of exclusive or semi-exclusive appropriation by anyone engaged in the dictionary business. It claims that "Webster's," as part of the title of a dictionary, indicates Webster's authorship of matter contained in the book, and, therefore, that, as it publishes a dictionary the principal part of which is Webster's work, it may use "Webster's" as part of the title thereof to indicate that fact; for that is the usual, natural and necessary mode of describing the contents of a book.

While the pretended purpose of this suit is to enjoin the use of the name "Webster's" as part of the title of the particular book above named, that is not its real

purpose; for the plates of that book were destroyed² before June 14, 1912,³ at the time when appellee began to publish its "New Websterian Illustrated," a dictionary compiled by Prof. Henry Thurston Peck and other editors from the 1847 Webster's Dictionary, and modern sources, the preparation of which was begun before any threat of suit was made.⁴

The real purpose of this suit is to secure, if possible, a judicial recognition of appellant's claim to superior rights in the name "Webster's" which would entitle it to forbid or regulate the use of that name by any of its numerous competitors as a part of the titles of their revisions, abridgements or amplifications of Noah Webster's work.

The District Court⁵ and the Circuit Court of Appeals⁶ expressly and emphatically refrained from recognizing appellant's claim that "Webster's" had a secondary meaning indicating appellant's dictionaries,⁷ but deemed it unnecessary to decide that point, holding that, even if appellant had superior rights in that name, appellant's inequitable conduct called for a dismissal of the complaint. That conduct, briefly stated, was as follows:

In 1904 a suit was filed against appellant by one

¹ This Point is discussed at page 51 of this brief.

² Rec., Vol. III., fol. 6251; Vol. II., fol. 4366.

³ Rec., Vol. II., fol. 6135.

⁴ Rec., Vol. III., fols. 6251 to 6266.

⁵ Rec., Vol. III., fols. 8272 to 8275.

⁶ Rec., Vol. III., page 2094.

⁷ Judge HAND's opinion, Rec., Vol. III., fols. 8271-8274. Judge NOYES' opinion, Rec., Vol. III., page 2094.

Ogilvie, as the result of which appellant was perpetually enjoined from

“in any manner claiming that it, the defendant, or any other person, firm or corporation claiming under or through it, has exclusive right to the use of the name ‘Webster’s’ in the title of dictionaries” (190 Fed. R., at p. 931).

When appellee first published its dictionary, in February, 1909, it sent a copy thereof to appellant, and a friendly correspondence ensued, during which no objection was made to appellee’s use of the name “Webster’s;” no claim was made that that name had a secondary meaning, and no objection was made to appellee’s announced plan to engage extensively in the sale of its book.

During the next two and a half years appellee sold over a million copies of its book and accumulated from \$50,000 to \$100,000 of profits.

Then, after a silence of nearly three years appellant made objections. Appellee, to save the expense of litigation, accommodated itself to every one of appellant’s unjust demands (such as the publication of cautionary notices)¹ only refusing to comply with its demand that appellee cease to use the name “Webster’s” absolutely. The making of that demand, in the face of the above quoted injunction, and the imposing upon appellee, under the

¹ A fac-simile of one of appellee’s cautionary notices will be found opposite page 137 hereof.

above circumstances, of the heavy expenses of this litigation, was regarded by the Court as oppressive and inequitable, and as sufficient reason for dismissing the complaint.

The court below did not trouble itself to determine whether the principal part of the contents of appellee's book was of Noah Webster's authorship, but held that it was sufficient for the purposes of this case that appellee's book had the same right to be called "Webster's" that appellant's books had, namely, each was directly descended by successive revisions from Noah Webster's dictionary. The court held that it did not lie in appellant's mouth to question appellee's right to use the name "Webster's" in the title of its book on the ground which appellant argued, namely, that the principal part of its contents was not Noah Webster's work, when appellant was using that name in the title of its latest and most important work, entitled "Webster's New International Dictionary",—although it was a book which its own witness testified was "OF ALMOST TOTALLY DIFFERENT LITERARY CONTENTS FROM ANY BOOK WITH WHICH NOAH WEBSTER HAD ANYTHING TO DO"¹.

¹ Judge HAND's opinion, Record, volume III., page 2061, folio 8244; also Rec., Vol. I., folio 701.

Brief of the Argument.

Point One.

PAGE

THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF EQUITY	6-30
A. The inequitable circumstances under which this suit was brought should move a Court of equity to refuse to aid the complainant...	6-12
B. Within the rule of the California Fig Syrup case the appellant comes into Court with unclean hands. For that reason alone the complaint should be dismissed	13-24
C. Appellant has used falsehood and misrepresentation in competition with this appellee.....	24-30

Point Two.

BRIEF CHRONOLOGICAL STATEMENT OF THE PRINCIPAL FACTS.....	30-48
---	-------

Point Three.

APPELLANT HAS FAILED TO PROVE THAT IT HAS ANY RIGHTS IN THE NAME "WEBSTER'S" SUPERIOR TO THOSE OF THE GENERAL PUBLIC...	49-116
A. As a matter of law the name "Webster's", having been dedicated to the public, as the name of copyrighted matter, can never be appropriated as a trade name on the theory that it has acquired a secondary meaning..	51-55
B. What is the secondary meaning claimed?..	55-58

C. Whether the alleged secondary meaning exists is purely a question of fact, to be determined solely upon the evidence in this case; in the determination of that fact prior adjudications cannot properly be considered by the Court.....	58-65
D. A "secondary meaning" is a trade mark and exist only where a name, originally descriptive, has wholly lost its descriptive signification	65-81
E. Rules of law governing proof of secondary meaning	81-86
F. Main argument on the question of secondary meaning.....	86-116
To prove that the generic name of the literary product of a famous author has lost its natural meaning is more difficult than in the case of any other descriptive term and has not, we believe, heretofore been successfully attempted.....	87-90
1. Appellant was not the first user of the title "Webster's Dictionary".....	90-91
2. Appellant was not the successor of the original publisher.....	91-92
3. The word "Webster's" in the title of a dictionary has uniformly been used as the name of Webster's work in the book for a century, and the only instance of its application to anything else is in the appellant's latest book	92-100
4. Appellant's use of the name "Webster's" in the title of a dictionary has never been exclusive	100-104
5. Synopsis of opinion testimony as to meaning of the name "Webster's".....	104
6. Synopsis of letters from persons alleged to have been misled by advertisements.....	104-105
7. Synopsis of testimony of "ordinary purchasers"	
(a) Appellant's 24 witnesses	105-113
(b) Appellee's witnesses.....	113-116

1891- Appellant made similar efforts with similar results (47 Fed., 411).

1892- Appellant made similar efforts with similar results (49 Fed., 944).

1904- Appellant made similar efforts with similar results (136 Fed., 477).

1904- Still determined to monopolize the Webster Dictionary business appellant resolved to make its competitors pay or apprehend having to pay heavy legal expenses to remain in the business. Accordingly it began to circulate letters in the trade threatening to sue anyone who handled dictionaries entitled "Webster's" except its own. One Ogilvie, who was publishing a revised "Webster's" on which he had spent over \$100,000, sued the Merriams to restrain this unfair competition. The Merriams filed a cross-bill claiming that "Webster's" had acquired a "secondary meaning." Ogilvie secured his injunction, but was found guilty of unfair acts aside from the use of the name "Webster's," and the final result, after numerous appeals by the Merriams, was that Ogilvie was enjoined from publishing his book without a "cautionary notice"; the Merriams' threats to sue anyone who would not recognize its claim to a monopoly in the name "Webster's" were declared to be tortious and it was perpetually enjoined

"from . . in any manner claiming that it . . has the exclusive right to the use of the name Webster's in the title of dictionaries."¹

¹ 159 Fed., 638; 170 Fed., 167.

1909- Appellee began to publish its dictionary with the title now complained of viz., WEBSTER'S NEW ILLUSTRATED DICTIONARY, WITH U. S. CENSUS AND MAPS.

1909, March 20- Appellant ordered a copy of defendant's dictionary.

1909, March 22nd- Appellee presented a copy with its compliments (*infra*, p. 191).

1909, March 23rd- Appellant acknowledged receipt and suggested that "the book looks suspiciously like a book formerly issued by another concern (and which by the way is in one of our suits), but of course we would be wrong in supposing such to be the case." The letter closed with compliments on the cuts and appearance of the books and thanks for the courtesy of appellee in sending the book without charge (fols. 4289, *et seq.*).

1909, March 24th- Appellee replied to the suggestion regarding the connection of the book with a litigation, and stated "We would be under a great obligation to you for any information that would tend to show we have been been dealt with unfairly," informed appellant that its sales of the books were extensive and added "we would like to know where we stand" (fol. 4291).

1909, April 2d. Appellant replied that, when it wrote its former letter it was under an impression which it could not verify

and about which it might be mistaken, and added, in the same friendly spirit, "We shall doubtless have occasion to write to you again about your book, but we shall ask nothing but what is proper and reasonable under the court decisions, and you will, of course, expect to grant no less" (fol. 4292).

No claim was made that "Webster's" had a secondary meaning, and no criticism was made of the appellee's use of that name as part of the title of its book.

1910-11. Appellee hit upon an ingenious scheme to sell great numbers of dictionaries through newspapers. The newspapers advertised on entire pages that they would donate a dictionary to any one person who presented before a fixed date a certain number of coupons, clipped from the paper, together with a small sum of money, 48c. to 98c., according to the binding. The newspapers enthusiastically adopted the scheme because it increased their circulations. This attractive dictionary offer, tremendously advertised, the reputations of the newspapers, and the cheapness of the books, created a widespread interest and demand. The result of this ingenious scheme was the sale of 500,000 or 600,000 of appellee's books in less than a year, and the realization of profits, which made the total profits of the 2½ years aggregate from \$50,000 to \$100,000.

1911, October 4th—Appellant, after a silence of nearly three years, resolved to appropriate appellees' profits or to drive it from the business of publishing abridged revisions of Webster's work, resorted to its same methods which had been decreed tortious in the first *Ogilvie* case, viz., it began to threaten to impose the expense and trouble of litigation upon a competitor unless it wholly desisted from using the name "Websters."

Its first letter of October 4th, 1911 (fol. 4280), thinly veiled its real purpose. It did not dare to state in writing that the price of peace was a surrender of the right to trade in Webster's work, knowing that that method of suppressing competition had been decreed illegal. It charged a violation of its rights "as the prior and long established publishers of the well-known 'Webster's' dictionaries"; but carefully refrained from specifying what those rights were or in what respect defendant was violating them.

1911, October 6th—Appellee replied expressing surprise, quoting the friendly correspondence of 1909, and asking specifications as to what was criticised in its conduct (fol. 4283).

Appellee then consulted Messrs. Strong & Cadwalader, its counsel, who informed it that, in one of the *Ogilvie* cases, it had been decreed that *Ogilvie* should insert a cautionary notice in his edition of Webster's dictionary.

1911, October 9th—Hoping to avoid the possibility of any controversy, appellee inserted a similar cautionary notice on its title pages; printed its name in gold leaf on the back of its books; and wrote to the newspapers asking them to insert a cautionary notice¹ in their advertisement (*infra*, p. 196).

1911, October 15th—Receiving no reply to its letter to appellant of October 6th (complainant preferred not to reveal, in writing, its tortious purpose to compel a complete surrender of defendant's right to use "Webster's") appellee, after waiting a week, finally sent a representative to find out from the officers of appellant in what particular it was charged with violating appellant's rights. Its representative expressed appellee's willingness to comply with any reasonable requirements appellant might make, and told the appellant's officers of the insertion of the cautionary notice and title-pages and in advertisements (*infra*, p. 196). The condition of avoiding the expense and trouble of litigation was then revealed by the terms of peace the appellant's president stipulated, viz.:

"QUIT USING THE WORD WEBSTER!"
(fol. 4574).

¹ Opposite page 137 of this brief is shown a fac-simile of one of these cautionary notices. Beginning October 9th, 1911, this form and size of notice was used at least once in every newspapers campaign (fol. 7008).

1911, October 18th— Appellant wrote to appellee referring appellee to Mr. Hale, its attorney, who was, presumably, to settle the terms of a surrender to the appellant of appellee's legal right to sell Webster's work under his name.

1911, October 19th— Appellee replied to this letter repeating the facts about the insertion of the cautionary notices, etc. (fol. 4302).

1911, November 8th— Appellant did not reply to the above letter, directly, nor communicate through Mr. Hale, its attorney; but, without further warning, began the present suit.

Judge HAND expressed his opinion of the foregoing inequitable conduct as follows :

" When the defendants each approached " the officers of the complainant " in a *bona fide* effort to accommodate themselves to the utmost rights which the complainant had up to that time enjoyed they were met with a demand for absolute discontinuance of the name; they are met with it here. This was illegal and had been so adjudged against this complainant in the very decree which is the basis of any supposed right they may have in the name ' Webster ' " (see Opinion, HAND, J., fols. 8270, 8271).

B.

Within the rule of the California Fig Syrup case the complainant comes into Court with unclean hands. For that reason alone the complaint should be dismissed.

Briefly stated the basis of this Point is that the "plaintiff sought to exclude the defendant from doing just what the plaintiff had done himself,"¹ namely from labelling as "Webster's" a book which does not contain Webster's work.

Complainant's latest and principal publication is entitled "Webster's New International Dictionary." Its frontispiece is a full page portrait of Dr. Noah Webster.

The use of the generic name of Webster's work in the principal title of the book, and the displaying of his portrait as its frontispiece, convey a representation to the public that the essential content of the book is of Webster's authorship. That representation, however, is false; for the book is conceded to be

"of almost totally different literary contents from any book with which Noah Webster had anything to do" (Record, Vol. I, fol. 701, and Judge HAND's opinion, Record, Vol. III., p. 2061 fol. 8244).

¹ Justice HOLMES in the Van Der Berg case, 33 Sup. Court Rep., 165, decided Jan. 6, 1913. In the same case Justice HOLMES aptly said, "Imposition on the public is not a ground on which the plaintiff can come into court, but is a very good ground for keeping him out of it."

As Webster is regarded by the general public as the greatest of all American and, perhaps, of all English lexicographers, the false representation that the essential content of a dictionary is of Webster's authorship is a material misrepresentation. Its purpose or effect is to secure for the Merriams, by a deception, the patronage which is attracted by the public's desire to possess the product of that celebrated lexicographer. That patronage complainant has been enjoying for over half a century, during which it published Webster's work as the essential content of its dictionaries, and, during which, in its title pages, prefaces and advertisement, it has always conspicuously proclaimed Webster's authorship of the contents thereof as the great feature of its dictionaries (see *infra*, p. 95). Now that it has eliminated Webster's work from its latest book it is not willing to lose the trade which his authorship attracts. To retain that trade, it resorts to a deception.

Whatever be the other facts in the case this fact alone, within the rule of the *California Fig Syrup* case,¹ should bar the complainant from any right to relief from a Court of Equity.

The analogies of fact between the *Fig Syrup* case and the present case are so complete², that there is no

¹ Worden vs. California Fig Syrup Co., 187 U. S., 516.

² In both it appeared that a picture was used to emphasize the name; in both the popularity of the product arose from the belief that a substantial ingredient of the product was that which the name described; in both the name had originally been truthfully used. In the *Fig Syrup* case, however, it was found that defendant had imitated all of complainant's marks and style of dressing with fraudulent intent, whereas, in the present case, the only thing appellant objects to is appellee's use of the word "Webster's."

escape from the applicability of the rule there laid down, unless, indeed, appellant has proven that "Webster's" has ceased to be the generic name of Webster's lexicographical writings.

This point would still hold good even if it were true that "Webster's" had acquired an additional or secondary meaning, viz.: Merriam's book containing Webster's work as its essential content; for, if the book did not answer to the latter requirement, it still would be falsely labelled "Webster's."

Has "Webster's" in the title of a dictionary ceased to signify to the public Noah Webster's work therein contained?

Judge HAND did not find that the name "Webster's" signified to the public no closer relation to Noah Webster's work than mere literary descent therefrom through successive revisions¹. He merely held that, since appellee's book measured up at least to the test of such literary descent, and as appellant's latest book had no other relation to Webster's work than mere literary descent, it did not lie in appellant's mouth to charge appellee with deceit on the ground that its book did not contain a material component of Webster's work.

We feel that the Court could almost take judicial cognizance of the fact that whatever may, be the ideas attached by scholars to the name, to the ordinary citizen the name of this celebrated lexicographer, in the title of a dictionary, plainly describes to plain people

¹. Judge HAND's opinion (Rec., Vol. III., fols. 8242-8246).

what it plainly signifies, namely, the part of the book which the celebrated Webster wrote.¹

We find in appellant's principal brief, below, what appears to be a complete agreement with our foregoing proposition. At page 98 thereof appellant, in criticising Judge HAND for holding that John Ogilvie might have truthfully entitled his 1850 revision of Noah Webster's dictionary as a "Webster's Imperial Dictionary,"² says :

"The plain reason why he did not do so was that such a title would have been dishonest and misleading. He was publishing a dictionary which he professed to have written himself and which could only be truthfully described as having been *written* by him."³

Bearing in the mind the fact that John Ogilvie's 1850 revision of Webster's dictionary retained as its essential content most of Webster's work, we venture to suggest that it is far more "dishonest and misleading" for appellant to label as "Webster's," and so represent as *written* by Webster, a book written by others, which is "of almost totally different literary contents from any book with which Dr. Noah Webster had anything to do."

¹ Judge HAND's opinion, folio 8254.

² In the *Fig Syrup* case this Court said : "It may be true, as a scientific fact known to physicians and pharmacists, that the syrup of figs has little or no laxative property ; but this is not the belief of the general public. They purchase this preparation on the faith that it is a laxative compound made from the juice of the fig, which is false. This is not an immaterial representation the effect of which is harmless but is a representation which goes to the very essence of the plaintiff's right to a trade-mark in these words."

³ Italics in original.

At page 97 of the above brief appellant said :

“ The complainant has never even remotely denied ‘ that any *honest* compilation or abridgement at the present time of Webster’s work is entitled to describe itself as such.’ ”

If any publisher’s honest compilation or abridgement of Dr. Webster’s work is entitled to describe itself as “ Webster’s,” that *must* be because “ Webster’s ” in the title honestly represents that “ Webster’s ” work is in the book.

It is difficult to perceive how appellant could take the position that “ Webster’s ” has lost its foregoing descriptive meaning, in view of the fact that its claim that defendant’s book is falsely labelled is based on the assumption that “ Webster’s ” in its title is a false representation that its essential content is Dr. Webster’s work.

A great part of appellant’s testimony and a great part of its brief on appeal are devoted to an effort to establish the proposition that the defendant’s book does not contain as its essential content Dr. Webster’s definitions.

In Mr. Hale’s brief, filed on Final Hearing, at pages 14, 15, he claimed that “ Webster’s,” in the title of defendant’s book is a “ false representation * * * because Webster is not the author of defendant’s book.”

If “ Webster ” in the title of appellee’s book conveys a representation to the public that Webster is its principal author, the same name, in the title of appellant’s book, conveys the same representation as to the contents of its book.

Unless appellant will recede from its foregoing position that "Webster's" in the title of appellee's book represents to the public that the essential content of the book is of Webster's authorship, then it is in no position to deny that the same name, in the title of any book, including its latest book, conveys the same representation.

But were it not admitted by appellant, it is a fact, nevertheless, that "Webster's," in the title of a dictionary signifies Webster's authorship.

We claim that it has no other meaning; but it is not necessary to maintain this Point, to negative the assertion that it has acquired an additional meaning.

That the natural meaning of "Webster's" in the title of a dictionary is that the book contains Webster's work is obvious. That such was its original meaning will not be denied.

Therefore that such continues to be its meaning will be presumed unless the evidence shows conclusively that that natural meaning has been wholly lost.

The question being as to what the name means to the general public, it is of no consequence what meaning scholars or publishers attach to the name. As was said in the *California Fig Syrup* case,

"It may be true as a scientific fact known to physicians and pharmacists, that the syrup of figs has little or no laxative property; but this is not the belief of the general public."

The direct evidence of the average purchasers who were examined in this case as to their understanding of

the meaning of "Webster's" in the title of a dictionary leaves no doubt but that the name continues to mean to the public what it naturally implies.

Of 1,228 representative members of the general public selected at random by the appellee's experts, 83 per cent. of those who answered the following question, "Who do you think wrote the definitions and fixed the spelling of the words to be found in the Webster's dictionaries you have known of?" answered "Webster" or "Noah Webster."

Appellant offered the testimony of twenty-two purchasers of appellee's book chosen by it from the five or six hundred thousand who had purchased that book. It may be assumed that these witnesses were chosen as the ones most likely to sustain appellant's contention. Only two of these testified that "Webster's" meant to them a book published by the Merriams, even though containing none of Webster's work. As to these two witnesses Judge HAND said that he paid not the least attention to their testimony (fol. 8238). Twelve of the twenty-two, specifically, and the rest by clear implication showed by their answers that the name "Webster's" in the title of a dictionary meant to them that the essential content of the book was matter of which Webster was author. We append the following quotations from their testimony.

Ida Smack testified :

"Q. Does the name 'Webster' in the title suggest to you the author or the publisher? A. Why, the author.

* * * * *

"Q. As between two dictionaries one of which contains a little of that man Webster's work and another of which contains a great deal of that man Webster's work, which would you consider more closely met your requirements for a real Webster's Dictionary? A. I would consider that the one that contained a great deal of that man Webster's work to suit my requirements, as I have occasion to look at the book quite often " (fol. 1442).

Edith Fisher testified :

"Q. Then, don't you mean by the term 'Webster's Dictionary' which you expect to buy to-day a dictionary based upon the original dictionary written by Noah Webster? A. In a sense it would have to be more than 'based' on it " (fol. 1755).

She explains that she means by the foregoing that a dictionary entitled "Webster's" would mean to her that it contained more of Webster's work than the word "based" implies (fol. 1757).

Gash testified :

"Q. You bought a Webster's Dictionary because you thought that the rules of spelling laid down by Noah Webster and the definitions given in his original dictionary were correct, is that true? A. Yes " (fols. 1095, 1096).

Catherine testified :

"Q. When you bought this book did you expect to get a book written by Noah Webster himself? A. Yes, sir " (fol. 1398).

Wells testified :

" Q. Does not ' Webster's Dictionary ' really mean to you a book originally compiled by Noah Webster and brought up to date? A. Yes, sir " (fol. 1670).

" Q. Is it connected in your mind with any particular publisher? A. No.

" Q. You buy the book, then, on the reputation of the original compiler Noah Webster? A. Yes " (fol. 1671).

So much for the direct evidence. Now for the circumstantial evidence ; for that is even stronger.

Until the publication of the appellant's latest book, no dictionary was ever published with " Webster's " in its title which was not wholly or essentially of Webster's authorship.

From 1806 until 1847 all dictionaries entitled " Webster's " were wholly of Dr. Webster's authorship. Appellant says, in the preface of its 1890 edition, that its 1847 edition " was little more than the original work of 1828 brought from two volumes into one, pruned of some excrescences and with moderate additions." Appellant's next important revisions (those of 1864 and 1890) not only retained the essential part of Webster's own work, namely, his definitions of the standard words of the language, but the retention of his work, as its essential content, was proclaimed and advertised as the book's principal claim to public approval.

In the preface of its 1847 edition appellant said : " The chief value of a dictionary consists in its defini-

tions. * * * It is in this respect especially that Dr. Webster's dictionary has been generally considered superior to every other both of this Country and of England."

In the edition of 1864 (Preface, page VI.) (which it still publishes) appellant advertises that the revisers had been "studiously careful * * * to retain the exact language of the earlier edition in every case possible, esteeming very highly Dr. Webster's plain and clearly expressed definitions for their own sake as well as for that of the author and preferring to err on the side of cautious reverence rather than on that of thoughtless innovation."

In the publishers' note of the 1890 edition (which it still publishes) appellant advertises its preservation of "those definitions of standard words which were Dr. Webster's especial merit" and proclaims that the book "retains that excellence in definitions which has made Webster's the safe and familiar authority to which judge, journalist, scholars, artisan and business man refer."

Appellant still continues to publish and sell "Webster's Unabridged Dictionary," a cheaply constructed reprint of the 1864 edition, as well as "Webster's National Pictorial Dictionary," "Webster's Condensed Dictionary" and "Webster's Practical Dictionary," being three small books abridged from the 1864 edition, all of which continue truthfully to foster the natural and century-old belief, that the name "Webster's", in the titles of dictionaries, is

applied in its natural and descriptive sense, to describe matter of Webster's authorship contained in the book.

Therefore, until the publication of appellant's 1909 edition no dictionary was sold by appellant (or any one else), having "Webster's" as its principal title, which did not contain, as its essential content, Webster's own work.

From the time of its entry into the field until the publication of its latest book appellant has invited public patronage by proclaiming that its books were of Noah Webster's authorship. It always (a) proclaimed conspicuously on its title pages that its dictionaries were "*By Noah Webster LL.D.*" and described separately the supplemental matter as work by *editors* which it named; (b) it published as frontispiece a full page portrait of Webster as *author*; (c) it published Webster's original preface under the title "*Author's*" preface, the prefaces of its revisionists being separately published as "Editors' Prefaces"; (d) it published a memoir of Webster as "author" in which is forth the story of his life, with especial emphasis upon the compilation of *his* famous dictionary.

Therefore no circumstance has ever occurred, during the century that "Webster's" has been used as the title of dictionaries, to cause that name to cease to be the apt description of Dr. Webster's own work in the book.

Not only in its prefaces, but in every other way, the appellant has, for years, proclaimed the fact that its books contained Webster's work, and thereby invited the patronage which would be attracted by the

public's desire to obtain the work of that celebrated lexicographer.

As appellant's latest and principal product is falsely labelled "Webster's," and is, therefore, calculated to obtain, by deceit, the patronage of those who want a dictionary containing, as its essential content, the work of our most celebrated lexicographer, its complaint should be dismissed.

C.

Complainant has used falsehood and misrepresentation in competition with this defendant.

The only one of appellant's books which was sold in direct competition with defendant's book was "Webster's Condensed Dictionary." Like appellee's book, it was sold in newspaper premium campaigns, for from 40 to 89 cents, according to binding.

It was, and is entitled and sold as its "TWENTIETH CENTURY EDITION" (fol. 661) with the date 1911 on the title page.

The truth is, however, that this so-called "Twentieth Century" edition *was abridged and copyrighted in 1884* (fols. 2286, 2800, 3021, 3022) from *complainant's 1864 edition* (fols. 2798, 2862). It is printed from the old plates (fol. 663) with no changes in the body of the book except those made by tipping in a leaf of aeronautical terms and by punching holes in the old plates and "plugging" in a few "flash terms" of recent cur-

rency. Out of a vocabulary of 46,000 words, about 33, only, are modern words.¹

The 126 pages of "wholly new matter" referred to in appellant's brief, at page 157, was not dictionary matter, but consisted of tables of useful information, such as "Weights and Measures," "Antidotes to Common Poisons," "Postal Rates and Regulations," "Presidents and Vice-Presidents of the United States," etc., etc., corresponding to the appendix of 160 pages, at the end of appellee's book, which embodies similar tables, as well as the Constitution of the United States, Declaration of Independence, etc., etc.

The editor who in 1884 compiled this "20th Century" edition, Dorsey Gardner (see its title page), died before the Twentieth Century dawned (fol. 664).

¹ We compared 21 pages, of the alleged "Twentieth Century Edition," chosen at random (10 pages, 70 pages apart, viz., pp. 70, 140, 210, 280, etc., and 12 pages, 50 pages apart, viz., pp. 100, 150, 200, 250, 300, 350, etc., etc.), with the corresponding pages of the 1884 edition of the book. We found that these 21 pages of the alleged revision were identical with the corresponding pages of the old book, except for the substitution of three words, namely, *mercerise*, *biograph* and *bi-plane*, for words cut out to make room for them. The first two are old words which are defined in appellant's 1879 supplement to its 1864 edition. Averaged, this would mean that one word was substituted in every 7 pages of the 691 pages in the old book, or that the "Twentieth Century Edition" contained 99 words, in all, not defined in the old book. Otherwise the old vocabulary of 46,000 words remains unchanged. As two of the above three substituted words were old words, defined in the 1879 supplement, this means that there was an average of one modern word to every 21 pages, or 33 modern words, in all, in this book advertised as "a splendid up-to-date lexicon" containing "all the new words" (fol. 6883).

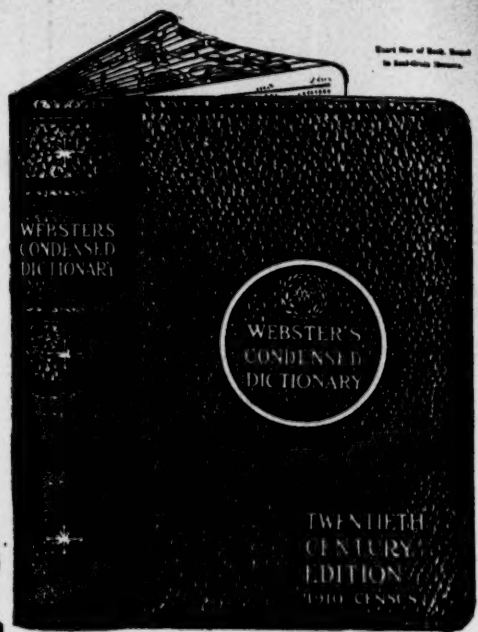
A comparison of the same 21 pages of the "Twentieth Century" with the 1864 edition, as supplemented in 1879, discloses no words in the former not defined in this still older book, except the above word *Bi-plane*, and 8 musty words, viz. *Zif*, *Prognothic*, *Bioginist*, *Bistock*, *Fauteuill*, *Vedic*, *Venu-section* and *Colocolo*.

Averaged, this would mean that the "Twentieth Century" contained only 297 words not defined in the 1864 edition, as supplemented in 1879, of which 33, only, were modern words.

The multitude of young men and women who graduated last June are taking their first business positions this fall. Fortunate indeed are those who learned to write and spell correctly. Their battle is half won in advance.



"You get the job, young man!"



It is never too late to learn—

The sooner you learn the quicker your compensation will be increased

Whenever you are in doubt as to the proper use of a word, look it up in a dictionary

It is a fine habit and you will soon begin to like it. You need—you must have a small dictionary right at your elbow; one within your reach, one that can be handled conveniently and quickly.

THE REPUBLIC gives you the opportunity of a lifetime to secure, at trifling cost, the best small dictionary in the world. You may never have another chance like this to own a genuine G. & C. Merriam Co. Webster's.

For seven coupons from seven consecutive issues of The Republic plus 40 cents —75 cents—or 89 cents (according to your choice) you can have a copy of

Webster's Twentieth Century Dictionary

Above is a picture of Offer No. 3. Exact in size, and showing the full and genuine narrow binding.

Costs you 80 cents and seven Coupons at the Dictionary Department, The Republic.

Find Coupons on another page

Webster's Twentieth Century Dictionary, bound in seal grain morocco, semi-flexible—beautiful, strong, durable, high-grade printing on high-grade paper; stamped in gold on back and sides. Besides the general contents this book contains color maps and charts as follows: General Map of the United States; General Map of the World; Flags of the Nations; Flags and Emblems of the International Order; Signal Service Order; Advertisements; Charts of the Planetary System. Contains 1910 census from 7 A.M. to 1 P.M. This book ordinarily sells for \$4.00. Given by The Republic for Seven Consecutive Dictionary Coupons and..... **89c**

This Random Book for Free Library Table. By Mail 15 cents extra for delivery charges.

On the opposite page is shown a fac-simile of one of the advertisements used in marketing this old book in connection with the campaign of the *St. Louis Republic* in September, 1911. Throughout that campaign, which was carried on "by special arrangement with the G. & C. Merriam Company of Springfield, Massachusetts" (fol. 7046), made through Reilly & Britton, complainant's selling agents (fol. 2646), appellant's 1884 dictionary was represented as containing "all the new words," as a "splendid up-to-date lexicon" (fol. 6883), as a "genuine 20th Century Webster's Dictionary" (fol. 6886), as a "genuine 1911 Edition of Webster's Dictionary" (fol. 6895). It was represented as "bound in genuine full seal grain Morocco," which was untrue (fols. 6884, 6931). *It was also advertised as "a condensed form" of the "New International," published by complainant in 1909, when, in fact, it was an abridgment of complainant's 1864 book* (fol. 6892). See opposite ^{p. 77} cut from an advertisement of the *St. Louis Republic* of September 6th, 1911, in which this false statement is made.

At page 159 of its brief appellant says :

"The charge that this book was advertised as an abridgment of the 'New International' published by complainant in 1909, is incorrect."

The advertisement we refer to speaks for itself. It says :

"Webster's Twentieth Century Dictionary is published by the C. & C. Merriam Co., the

same concern that publishes the new International Dictionary. * * *

"The 'Twentieth Century' is a condensed form of the larger book, made available for more convenient and easy reference."

See reproduction of this advertisement opposite this page.

At page 160 of the brief appellant says :

"In view of the fact that both the book itself and the advertisements proclaimed that this book was originally compiled in 1884, and was based upon the unabridged Webster of 1864, it is surely absurd to claim that it was intentionally represented as an abridged of the New International of 1909."

As a matter of fact neither the book nor the advertisements "proclaimed" the date when the book was compiled, nor the date of the book from which it was abridged. On the contrary, the preface of the alleged "Twentieth Century Edition" is an exact reproduction, in all other respects of the preface of the 1884 book, with one most significant omission, namely, *the date* "New Haven, May, 1884" (Compare the Preface at p. V.).

A comparison of appellant's alleged "Twentieth Century Edition" with defendant's book will show how archaic is the vocabulary of appellant's book¹ and how

¹ Take, for example, the definition of the word "rupee" which is said in 1918 to be "coined by the East India Company at Calcutta." The East India Company went out of existence about 1860, immediately after the Indian Mutiny of 1859 (fol. 2295).

Webster's Twentieth Century Dictionary is published by the G. & C. Merriam Co., the same concern that publishes the new International Dictionary which is indorsed by the U. S. Supreme Court, the Supreme Court of Missouri, ex-Superintendent of Public Instruction, Prof. Howard A. Gass, and by leading educators throughout the country. The "Twentieth Century" is a condensed form of the larger book, made available for more convenient and easy reference.

It is beautifully illustrated; contains colored maps and charts, general maps of the United States and of the world, flags of all nations, flags and pennants of the International Code, 1,500 text illustrations and illustrations pertaining to more than fifty subjects in monotone, depicting various types and makes of aeroplanes, wireless telegraph apparatus, vehicles of modern transportation, instruments of modern warfare and latest fire-fighting apparatus.

(Exact Size.)



fresh and modern is that of appellee. This would naturally be expected in view of the fact that the literary matter of appellant's book is taken from its 1864 edition, while appellee's book was compiled in 1904 from a dictionary compiled in 1899. In 1904 appellee made 735 changes⁸ (consisting of 483 new words and revised definitions and 269 other words) in its vocabulary of 30,000 words, and it was revised from time to time (fol. 4357) under the direction of Prof. Charles Leonard Stuart of New York, Prof. Chas. Morris of Philadelphia and Prof. H. T. Peck of New York (fol. 4366).

All of the text illustrations of appellant's alleged "Twentieth Century Edition," date from 1864 or earlier.¹

The general vocabulary of appellant's so-called "Twentieth century" edition, includes a collection of musty words, for example "Aga," "Agama," "Arba-lest," "Alembic," "Alguazil," "Almeh," "Alnage," "Anime," "Aatilyssic," "Apncea," etc., while such words as "Plumcot," which at once makes the reader familiar with Mr. Luther Burbank's horticultural magic are omitted. Appellant's so-called "20th Century" edition does not define such words as "Chromosphere," "Chromogen," "N-Rays," "Kinetic," "Electron," "Wireless-telephony," "Zincode," and a host of similar

¹ Take, for example, the antiquated Columbia hand-press which is given as an illustration of a printing press. Compare with this the modern double octuple press which illustrates appellee's dictionary. Compare also the antiquated locomotive depicted in complainant's Condensed Dictionary and the reference to its smoke-stack as a "chimney." Compare also the illustrations of such common articles as "air-pump," "trombone," "sugar mill," "revolver" and "victoria."

words belonging to modern physics and applied chemistry all of which are to be found in appellee's book; nor does it define the words "Electro-Cautery" and other medical applications of electricity, nor "Germicide," "Germule," "Iodoform," "Psycotherapy," "Spirograph," "Zionism," or the new elements "Xenon," "Argon," "Crypton," or "Helium," all of which are defined in appellee's dictionary. Even such familiar words as "Electrocute," "Gingerade," "Khaki," "Roof-garden," "Subway," "Hallmark," "Malingering," and such widely current slang words as "Globe-Trotter," "Joy-ride," "Dope," "Dude," etc., all of which are defined in appellee's dictionary, cannot be found in appellant's so-called "Twentieth Century" dictionary. It is useless to multiply these lists further. Yet the holder of ill-gotten gains made by selling, as its "Twentieth Century Edition," the above 1884 compilation of its 1864 edition has the effrontery to invoke the equity of this court to protect it and the public "against fraud" consisting, it says, in appellee's selling an old book as a modern edition!¹ It solemnly admonishes the court "that especially in the interest of the public the principles of plain business morality should be enforced. The public calling for and buying a *modern* Webster's dictionary is entitled to have a genuine publication," etc.²

¹ See Appellant's Brief below, p. 49 (top).

² *Ibid.*, page 96.

If appellant should disclaim responsibility for the false advertisements, see at page 77 hereof citations of testimony showing that the false representations were its own or were made by its agent with its knowledge and sanction.

Should this court not affirm the dismissal of the complaint below, on one of the above equitable grounds, it will then consider whether or not the facts involved disclosed that appellant possesses any right or property in the name "Webster's" which entitles it to prohibit or regulate the use of that name by injunction, or which entitles it to an accounting, or both, against this appellee.

We set out below a chronological statement of the facts on which any right or property, if its exists, must rest.

POINT TWO.

Brief Statement of the Principal Facts.¹

As far as practicable, this statement will be chronological.

The facts with folio reference are more fully stated at pages 140-174 of the Appendix of this brief.

PERIOD BEFORE COMPLAINANT ENTERED THE WEBSTER DICTIONARY BUSINESS.

1806- Hudson & Goodwin of Hartford, and Increase, Cook & Company of New Haven published Webster's first dictionary.

1828- S. Converse of New York published Webster's completed work in two big volumes.

¹ This statement ends at page 48.

1834- Copyright of 1806 edition expired, and the name "Webster's" became public property as the title of his work.

1843- Webster died.

1806-47 The following publishers were engaged in publishing big and abridged "Webster's Dictionaries," viz.:

1806-40 Hudson & Goodwin, Hartford,

1806-40 Increase, Cook & Co., New Haven,

1807 and probably

thereafter J. & D., West Boston,

1828-40 " " S. Converse, New York,

1828-56 " " N. & J. White, New York,

1830 White, Gallagher & White, New York,

1833-54 F. J. Huntington, New York,

1837-54 Huntington & Co., New York,

1837-54 Huntington & Savage, New York,

1839-56 " " White & Sheffield,

1840-56 " " J. S. & C. Adams, Amherst, Mass.

1841-56 " " Harper & Bros., New York.

The circulation of the above books before 1847 was extensive, as appears by appellant's statement in its preface of the 1847 edition, that Noah Webster's books had, prior to that time, been "read by millions."

The above facts absolutely contradict the assumption of the Court, in the Ogilvie case, that appellant was the *original* publisher of Webster's Dictionary or the original publisher's successor.

PERIOD FROM APPELLANT'S ENTRY INTO THE WEBSTER DICTIONARY BUSINESS UNTIL 1889.

(For details and folio references see *infra* pp. 144-157.)

This period is separately considered because the Ogilvie decisions, holding that a secondary meaning in the name "Webster" existed, were based on the Court's erroneous assumption that appellant was the *exclusive* publisher of Webster's dictionaries from 1847 to 1889.

1847- Appellant published its first Webster's dictionary.

This book, to quote the preface thereof, "was little more than the original work of 1828 brought from two volumes into one, pruned of some excrescences, and with moderate additions."

Appellant's right to publish this book carried with it no trade-mark rights in the name "Webster." What it acquired was nothing more than a license from the owner of the copyright of the 1828 edition to publish the matter in that edition. This was the same right which the twelve publishers above named already enjoyed as licensees and continued to exercise.

1847- Webster's fame already was so great that appellant proclaimed that his *name* was more widely known than that of anyone except George Washington. (See preface of appellant's 1847 edition.)

- 1847- Webster's fame already especially attached to his definitions of the standard words of the language. (See preface of appellant's 1847 edition.)
- 1847-56- N. & J. White published Webster's dictionaries.
- 1847-54- Huntington & Co. published four different Webster's dictionaries.
- 1847-54 F. J. Huntington published Webster's dictionaries.
- 1847-54 Huntington & Savage published Webster's dictionaries.
- 1847-56 and probably thereafter, White and Sheffield published Webster's dictionaries.
- 1847-56 and probably thereafter, J. S. & C. Adams published Webster's dictionaries.
- 1847-56 and probably thereafter, Harper & Bros. published Webster's dictionaries.
- 1847-57 and probably thereafter, Mason Bros. published six different Webster's dictionaries.
- 1848-76 and probably thereafter, J. B. Lippincott & Company published five different Webster's dictionaries.
- 1864- Appellant published its first real revision of Webster's dictionary, *i. e.*, the first book entitled "Webster's," embodying revisions made by other editors without Webster's collaboration.
- 1857-92 American Book Company published Webster's dictionaries.

- 1867-92 Ivison, Blakeman & Taylor published seven different Webster's dictionaries.
- 1870- Copyright of Webster's dictionary, 1828 edition, expired.
- 1872- and later—J. Duffy's Sons Co. published Webster's dictionaries.
- 1879-1912 Hurst & Company published Webster's dictionaries.
- 1880-89 World Publishing Co. published Webster's dictionaries.
- 1885-90 Ward, Locke & Co. published various Webster's Dictionaries varying in size from Crown octavo to pocket editions.
- 1847-64 The total number of appellant's publications of Webster's dictionaries was less than the total number published by its above competitors. (See Appendix, pages 156-157.)
- 1864-90 Appellant's publications of Webster's dictionaries not shown to be greater than the number of Webster's dictionaries published by competitors. (See Appendix, pages 159-160.)
- 1890- Appellant published its second revision.

It retained unchanged "those definitions of standard words which are Dr. Webster's especial merit," and the new title Webster's "International" was given to the book to indicate the presence of new matter in it additional to Webster's work. (See Publisher's Notice of this edition.)

1847-1889- Not only is it untrue that Appellant was the "sole" publisher of Webster's dictionaries from 1847 to 1889, but there were sixteen publishers, one or more of whom was publishing during every moment of that period, and the extent of their sales exceeded the complainant's (Appendix at pp. 140-157).

1889 TO DATE.

(For details and folio references see Appendix, pp. 157-166.)

- 1889- Copyright of Appellant's Webster's Dictionary (1847 edition) expired.
- 1890- M. A. Donohue began to publish reprints of the Appellant's 1847 edition of Webster's Unabridged Dictionary, and sold over one million copies thereof (Appendix, p. 158).
- 1890- Henry G. Allen began publishing reprints of the 1847 edition.
- 1890- Brock & Rankin did the same.
- 1890- W. B. Conkey Company did the same.
- 1890- Alden & Company did the same.
- 1890- The Werner Company did the same.
- 1890- George W. Ogilvie did the same.
- 1890- Appellant sued to enjoin the use of the name "Webster's" in titles of above publications. Its claim to superior rights in the name "Webster's" was rejected by the Court as "nonsense."

Merriam vs. Holloway (43 Fed., 450).

1891- Appellant made similar effort with a similar result.

Merriam vs. Famous Shoe Co. (47 Fed., 411).

1892- Appellant made similar effort with a similar result.

Merriam vs. Texas Siftings Co. (49 Fed., 944).

For summary of above cases see Appendix, pp. 212-219.

In the 48 years from 1864 to 1912 appellant sold 1,200,000 big dictionaries. Within a few years after 1890 the above competitors had sold more than that number of big dictionaries alone. Donohue & Company alone sold over 1,000,000 copies. (See Appendix at pp. 158-159.)

1904-1912 George W. Ogilvie and his successor, Saalfield Publishing Company, extensively published a complete and much enlarged revision of the 1847 edition (*infra*, p. 158).

1890-1912 In addition to the above seven publishers of unabridged "Webster's," the following forty-four publishers published abridged editions of Webster's dictionaries (Appendix, pp. 162-166):

Allen & Co.

L. W. Walters.

Barse & Hopkins.

Allison & Webster.

Wm. Bulger.

W. B. Bechtold.

Commonwealth Publishing Co.

A. L. Burt.

Cupples & Leon Co.

W. B. Conkey Co.	Donohue, Henneberry & Co.
M. A. Donohue & Co.	Frank Bros.
Excelsior Publishing Co.	Hampden Publishing Co.
Funk & Co. of Michigan.	John Hovendon.
Geo. M. Hill & Co.	Laird & Lee.
Hurst & Company.	Loomis Bros.
Lamont, O'Donnell & Co.	Madison Book Co.
David McKay.	E. E. Miles.
Marsh & Company.	Mutual Publishing Co.
Monarch Book Co.	F. Tennyson Neely.
National Publishing Co.	G. W. Ogilvie.
Geo. W. Noble.	R. S. Peale & Co.
I. & M. Ottenheimer.	Popular Publishing Co.
Peoples Publishing Co.	Syndicate Publishing Co.
Reilly & Britton.	Thompson & Thomas.
Success Publishing Co.	W. R. Van Sant.
C. C. Thomas & Co.	John C. Winston Co.
Wehman Bros.	

As compared with 3,500,000 abridged dictionaries published by appellant during this period, the aggregate sales of abridged Webster's dictionaries by these competitors vastly exceeded its own (pp. 160-7 hereof).

The American Book Company published and sold over 3,500,000 abridged dictionaries during this period (Appendix, p. 161).

Laird & Lee alone have published twelve different abridged editions of Webster's dictionaries (*Ib.*, 164-5), some of which have been adopted in the public schools of Indiana,

Illinois, Ohio, Michigan, Maryland, Kansas, Nebraska, Missouri, Oklahoma and Utah (*Ib.*, 161). As Laird & Lee are being sued for an accounting by the complainant, obviously it was impossible to secure exact proof of their sales, though there is evidence that they sold over 1,000,000 copies of the "Vest Pocket" edition alone. Appellee's sales in one year only exceeded 500,000 to 600,000 books.

In the 48 years from 1864 to 1912, appellant spent \$1,900,000 on advertising. It has issued 86,000,000 circulars (fols. 530-2).

The advertisements of appellee's dictionary alone has occupied space in newspapers which, at the current rates, would cost \$2,500,000, and, counting each newspaper as a circular, appellee has issued over 600,000,000 circulars (fols. 4542-5).

Ogilvie and Saalfeld have spent over \$125,000 in advertising; Laird & Lee claim to have spent more than the complainant; one mail order house which advertises Webster's dictionaries of various competitors of the appellant issues 7,000,000 catalogs annually (Appendix, pp. 169-170).

1904- Appellant made another unsuccessful attempt by law-suit to drive a competitor out of the Webster dictionary business.

Merriam vs. Straus (136 Fed., 477).

This was the first case in which the appell-

ant ever claimed that "Webster's" had acquired a "secondary meaning," though its continuous litigations against competitors using the name "Webster's" had been going on for fourteen years.

1904-Appellant having sought unfairly to drive competitors from the field by sending letters and circulars among the trade claiming that it had an exclusive right to use the name "Webster's," and would sue anyone invading that alleged right, Ogilvie sued to enjoin this unfair practice.

Appellant filed a cross bill claiming an exclusive right in the name "Webster" and seeking to enjoin Ogilvie from using that name.

Ogilvie obtained the injunction he prayed for, Merriams being enjoined **"from * * in any manner claiming that it * * or any person, firm or corporation claiming under or through it, has the exclusive right to the use of the name Webster's in the title of dictionaries"** (159 Fed., 638; 170 Fed., 167).

It was found that, aside from the use of the name "Webster's," the title pages and backs of Ogilvie's dictionaries had features imitative of the title pages and backs of the Merriam dictionaries, and he was accordingly enjoined. Judge COLT also found that the name "Webster's" had acquired a "secondary

meaning," indicating dictionaries published by the Merriams.

The finding was unnecessary to warrant the injunction which was granted, and it now appears, was based on two erroneous assumptions; one, that "the Merriam Company and its predecessors * * * acquired all the rights in Webster's dictionary from the heirs of Noah Webster previous to 1847," and the other "that from 1847 to 1889 the Merriams were the sole publishers of Webster's dictionaries."

We have discussed the finding of "secondary meaning" in this case at pages 60 *et seq.* of this brief.

An accounting was refused because Merriam's claims to an exclusive right in the name "Webster's" and its threats to sue those using that name were held to be tortious.

Ogilvie was entirely satisfied with the first decision in this case and did not appeal, so that in all successive phases of the Ogilvie-Merriam, Saalfeld litigation "secondary" meaning was assumed to be a settled fact.

1906—Copyright of the appellant's 1864 edition ("Webster's Unabridged") expired.

1908—The Merriam Co. sued Ogilvie's successor, the Saalfeld Company, for unfair competition, again claiming an exclusive right in the name "Websters." The

Saalfeld Company defended on the ground that it had become assignee of Ogilvie's business while the above Merriam-Ogilvie cases were being litigated, and that, therefore, the decrees therein constituted *res adjudicata*. In other words, it accepted the adjudication of "secondary meaning," in order to defeat Merriam's claim to an exclusive right in the name "Webster's." The plea of *res adjudicata* was sustained.

Merriam vs. Saalfeld (190 Fed., 927).

But an injunction was granted against Saalfeld on the ground that it had not observed the limitations of the injunction granted against Ogilvie.

1909—Defendant purchased from Louis Klopsch the plates of its present dictionary, which Klopsch had published, in a small way, under the title,

"Crown Dictionary of the English Language, Based upon the Unabridged Dictionary of Noah Webster, LL.D., etc." (Brief, p.).

Appellee made some revisions of the book and published it under the title

"Webster's New Illustrated Dictionary with U. S. Census and Maps. Revised and brought up to date, etc. Based upon the Unabridged dictionary of Noah Webster, LL.D. SYNDICATE PUBLISHING COMPANY, New York."

The name "Syndicate Publishing Company" was printed in large red letters in the customary place, on the title page, where publishers' names always appear.

The above dictionary is descended, by successive revisions, from Noah Webster's work ; and it retains, as its essential contents, Noah Webster's work.

Judge HAND found that the literary descent of the above dictionary from Noah Webster's dictionary was as follows :

John Ogilvie, in 1850, published a revision of Noah Webster's dictionary¹ entitled "The Imperial Dictionary." It was revised in 1883.² A revision of it was made by one E. D. Price and called the "British Empire Dictionary."³ In 1899 one Roe revised this book and published it as "The Crown Dictionary, Based upon the Unabridged Dictionary of Noah Webster, LL.D." The Crown dictionary was the immediate basis of appellee's book.⁴

All of appellant's present day books are separated from Noah Webster's dictionary by a greater number of intervening revisions than in the case of appellee's book.

As to the contents of appellee's book, appellant's own witness Mawson said that he had minutely examined 10 pages of this book selected at random, and he

¹ Rec., Vol. III., fols. 8250-8253.

² *Ib.*, fol. 8248.

³ *Ib.*, fol. 8248, 8249.

⁴ *Ib.*, fol. 8247.

concluded or admitted that 45 per cent. of the book was "by actual" count "absolutely identical" with "Webster's Dictionary of 1847" (fols. 2170, 2178, 2354-6).

"Appellee's witness Peck, after counting and comparing with the 1847 Webster 200 pages of this book, analyzed its contents as follows: It defines approximately 30,000 words. Of this number approximately 5,550, or about 18.5%, are new words, which were not given or defined in the 1847 Webster. The balance of 81.5%, or 24,450 words, are the only ones whose definitions could possibly be taken from Webster. 67.6% of the words used in defining this residual group of words are identical with the words used in the corresponding Webster definitions:

Summarized Analysis.

	Defendant's Estimate based on count of 200 pages.	Complainant's Estimate based on count of 10 pages.
Percentage of new words not defined by Webster	18.5%	18.5%
Percentage of definitions revised	26.5%	36.5%
Percentage of definitions kept unchanged	55%	45%
	<hr/> 100%	<hr/> 100%

The revised matter which differs from Webster consists largely of corrections in definitions of technical and scientific words inaccurately or clumsily defined by Webster.

Professor Rolfe of the University of Pennsylvania,

formerly connected with the faculty of Harvard and also of Cornell and President of both the American Philological Association and of the Classical Association of the United States (fol. 7955) whom Judge HAND referred to as "a concededly fair witness" (fol. 8256) said that he had spent a week in examining with very great care Professor Peck's markings upon which defendant's estimate of percentages was based (fol. 7962) and that his conclusion was that "they were carried out with extreme conscientiousness" (fol. 7963).

On cross-examination Professor Rolfe testified as follows :

"Q. You have stated that in your opinion you thought that, upon the whole, defendant's dictionary was properly called Webster's Dictionary. Please amplify that answer and state how and why you entertain that opinion? A. Well, first, because I was satisfied in my own mind that it contained at least fifty per cent. of material taken directly from Webster's Dictionary of 1847.

"Q. And that was based on your verification of Professor Peck's markings? A. Yes, that was based on that.

"Q. What else? A. And also some other things that occurred to me. Of course, we do not go absolutely hard and fast by red marks and so on, but as you work through a thing of that kind you get an impression. And when I got through my impression was a little stronger than the percentages would indicate, that is, as to the propriety of the use of the term" (fols. 8059 to 8060).

Appellee's dictionary follows carefully the three great Webster rules of spelling, namely, that words in "our" like "labour," "harbour," etc., should be spelled in "or;" that words in "re" like "theatre," "centre," etc., should be spelled "theater" and "center;" that words like "traveller" with a double "l" should be spelled "traveler" (fols. 3626, 7943). The trivial exceptions to this statement, five in number, have special reasons which are discussed at page 702, *infra*.

1909- Appellant published under the title "Webster's New International Dictionary," a book which they admit "IS A BOOK OF ALMOST TOTALLY DIFFERENT LITERARY CONTENTS THAN ANY BOOK WITH WHICH DR. NOAH WEBSTER HAD ANYTHING TO DO" (fols. 698-701).

1909, March 20- Appellant ordered a copy of appellee's book; appellee sent a copy with its compliments; a friendly correspondence followed, with a promise on April 2, 1909, by the Merriam's to communicate further if they had any request to make.

1910-11. A year later, appellee hit upon an ingenious scheme to sell great numbers of dictionaries through newspapers. The newspapers advertised on entire pages that they would donate a dictionary to any one person who presented before a fixed date a certain number of coupons, clipped from the paper, together with a small sum of money, 48c. to 98c., according to the binding. The newspapers enthusiastically adopted the scheme because it in-

creased their circulations. This attractive dictionary offer, tremendously advertised, the reputation of the newspapers, and the cheapness of the books, created a widespread interest and demand. The result of this ingenious scheme was the sale of 500,000 or 600,000 of defendant's books in less than a year.

The only unfair practice charged by appellant aside from the use of the name "Webster's" is based upon the advertisements, and the charge against these advertisements are all based directly or indirectly on their use of the name "Webster's."

(Full discussion of defendant's advertisements, infra, pp. 126-131.)

1911, Oct. 6th to Nov. 1st.—After a silence of two and one-half years, during which the appellee had earned from \$50,000 to \$100,000 of profits, without protest from appellant against defendant's use of the name "Webster's," appellant demanded that the use of the name be absolutely surrendered, and in spite of appellee's efforts to avoid a lawsuit by inserting cautionary notices in its title pages and advertisements, brought this oppressive suit which has subjected the appellee to the expenditure of many thousands of dollars.

1912—The titles of the dictionaries published and dealt in by appellant when the suit was filed were, and now are :

APPELLANT'S TITLES.

Unabridged dictionaries :

Webster's *Unabridged* Dictionary,
 Webster's *International* Dictionary,
 Webster's *New International* Dictionary,
 being respectively its editions of 1864, of
 1890 and of 1909.

Abridged dictionaries :

Webster's *Condensed* Dictionary,
 Webster's *Collegiate* Dictionary,
 Webster's *Little Gem* Dictionary,
 Webster's *National Pictorial* Dictionary,
 Webster's *Practical* Dictionary (Record,
 pp. 660-662),

three being abridgments of its 1864 editions
 and two of its 1890 edition. Note how differ-
 ent, from any of the foregoing titles, are the
 title of defendant's book, namely :

APPELLEE'S TITLES.

Webster's *New Illustrated* Dictionary, with
U. S. Census and Maps.

Webster's *New Standard* Dictionary, with
U. S. Census and Maps.

1912- Judge COXE granted a preliminary in-
 junction enjoining appellee from doing
 otherwise than it had been doing for
 three weeks before the suit was filed.
 He did this evidently because he

thought that no harm could be done in ordering appellee to do what it was already doing voluntarily, and he added to his opinion, "indeed, it seems for the interest of both parties that, pending final hearing, their rights shall be so fixed that there can be no room for further disagreement." He erroneously treated the finding of fact in the Ogilvie case to the effect that the name "Webster's" had a secondary meaning," as though it were an adjudication of law; but, obviously, he gave the matter of secondary meaning very little consideration, granting the temporary injunction on the practical ground that it only ordered the defendant to do what it was willing to do, and probably afforded a protection to it by fixing the rights of the parties pending the final hearing.

- 1912- The Merriams' application for a rehearing in the Saalfield case, on the question of accounting, was allowed, and a limited accounting was granted as to acts committed by the Saalfield Company *in contravention of the injunction decreed* in the Ogilvie case.
- 1913- On the final hearing of the present case Judge HAND dismissed the complaint with costs.

POINT THREE.

Appellant has failed to prove that it has any rights in the name " Webster's " superior to those of the general public.

On the strength of the facts we have just set forth Appellant lays claim to exclusive rights, in the name " Webster's," in the dictionary business, which give it power to regulate and even prohibit the use of that name by others in that business. As to just what is the nature and basis of this alleged right the Appellant's brief is not clear. In one place it states that the law of unfair competition must control the decision of this appeal and adds that the reason for the rules of unfair competition is the existence of *property* in reputation and good will, but elsewhere it argues that even though Appellant possesses no property right in the name " Webster's ", that it is entitled to an injunction because the public have been deceived.

We submit, on the contrary, that the doctrines of unfair competition do not warrant the court in enjoining a defendant for imposing on the public unless the imposition is of *one* kind, namely, a false representation that the goods are goods of the complainant. This is the position taken by Judge HAND, which appellant criticises. It is the position of the Supreme Court as enunciated in January of this year, when Judge HOLMES, in the *Van Der Berg* case, 33 Sup. Ct., 165, said :

" Imposition on the public is not a ground on which the plaintiff can come into court."

The Supreme Court came to the same conclusion in the *Fig Syrup* case, for, though it was conceded that the public had been imposed upon, no injunction was granted.

This doctrine is easily illustrated: A coffee merchant in New York City may be detected in the act of selling some sort of bean as coffee. The public may be imposed upon. Nevertheless, no suit lies at the instance of any other coffee merchant in New York to enjoin such an act under the laws of unfair competition. Supposing the defendant here were selling as a Webster's dictionary a book which did not contain Webster's work. The other Webster's dictionary makers, including the Merriams, would have no right to an injunction prohibiting these acts merely because the public supposed that they were buying a book containing Webster's work which in fact contained none.

If we are right in this statement of the law, this complainant cannot obtain any injunction prohibiting or regulating the use which defendant makes of the name unless it can show upon the law, and upon the facts in evidence in this case that it possesses some property right in the name superior to the rights of the general public. This it attempts to do by claiming that it possesses a trade-mark or a "secondary meaning" in the name "Webster's."

Appellee maintains that such claim must be rejected as a matter of law; but that, if that proposition be not sound, that the evidence does not sustain the appellant's proposition of fact that a secondary meaning exists.

A.

As a matter of law the name "Webster's" having been dedicated to the public, as the name of copyrighted matter, can never be appropriated as a trade name, on the theory that it has acquired a secondary meaning.

The copyright of Webster's first dictionary expired in 1834; of his second, in 1870; and of his third, in 1889. The copyrights of over twenty-five other dictionaries embodying Webster's work, with various revisions, and all having the name "Webster's" as part of the title, have expired. These include all dictionaries copyrighted by the appellant before 1871; that is, *all* of its real revisions, with the abridgements based thereon, except its revisions of 1890 and 1909.

We accept the appellant's following statement at page 137 of its brief :

"It is conceded that the title of a particular book is the generic description and name of that book."

At page 75 of appellant's brief below :

"The name is just as much generically descriptive and *publici juris* during the life of the monopoly as afterwards."

"Webster's" was and is therefore the generic name of Webster's work,¹ all of which was copyrighted. Con-

¹ Appellant admits this. At page 18 of its brief it says, referring to the basic work of 1828: "This work was entitled 'An American Dictionary', * * * but upon its cover it was entitled simply 'Webster's Dictionary', by which name it was known in its time, and by which name every subsequent edition or revision has been likewise known."

sequently, " Webster's ", as a matter of law, always has been and now is generically descriptive of Webster's copyrighted writings, and it has never been nor is it now susceptible of being exclusively appropriated as a trade-mark or of being semi-exclusively appropriated as a name with a secondary trade-mark meaning ; for that would recognize a perpetual superior right by one dealer in a name which always has been and is *by law* generic and descriptive.

Black vs. Ehrich, 44 Fed., 793, argued by Roland Cox for the complainant; decided by WALLACE, J. Complainant, an Edinburgh, Scotland, concern, publishers of the Encyclopedia Britannica, and of its successive revisions, sued the defendants, who were publishing their own revision thereof in Chicago. The case was one for unfair competition. Judge WALLACE said :

" With the exception of the copyrighted articles, the Encyclopedia Britannica, 9th edition, is public property in this country at least, and a rival publisher has the right to make any use of it he sees fit. He may use any part of it, or all of it, and call it by what name he prefers. *Neither the author nor the proprietor of a literary work has any property in its name.*¹ It is a term of description which serves to identify the work, but any other person can with impunity adopt it and apply it to any other book or to any trade commodity, provided he does not use it as a false token, to induce the public to believe that a thing to which it is applied is the identical thing which it originally designated. If literary

¹ Italics ours.

property can be protected upon the theory that the name by which it is christened is equivalent to a trade-mark, there would be no necessity for copyright laws."

In *Centaur Co. vs. Heinsfurter*, 84 Fed., 955, Judge BREWER of the United States Supreme Court, who delivered the opinion (and who sat in the *Singer* case), said :

" This case turns upon the question whether the plaintiff has an exclusive right to the use of the word ' Castoria ' as a trade-mark ; for, except by the use of that word, there is no evidence in the record of anything done by defendants calculated to mislead purchasers into the supposition that they are buying an article manufactured by the plaintiff. * * * So that it cannot be pretended that they were deceiving the public with the idea that the article which they manufactured and sold was something manufactured and sold by plaintiff, unless that deception resulted from the use of the word ' Castoria.' Hence, if the defendants had a right to use the word ' Castoria ' as descriptive of the article which they were manufacturing and selling, there can be no doubt that the decree was rightly entered in their favor. Whether the defendant had a right to use this name depends on the further question whether the word ' Castoria ' is the generic name of the thing manufactured and sold, or is a mark or name used to distinguish one party by whom the thing is manufactured and sold from all other manufacturers of that thing. * * * The patent gave no right to any particular name, but simply to the exclusive

manufacture and sale. All such rights expired in 1885, and from that time forth any party has had right to manufacture and sell that particular compound, and also a right to manufacture and sell it under the name by which it has become generally known to the public; and, if to that public the article has become generally known only by a single name, that name must be considered as descriptive of the thing manufactured, and not of the manufacturer. It is true that during the life of a patent the name of the thing may also be indicative of the manufacturer, because the thing can then be manufactured only by the single person; but, when the right to manufacture and sell becomes universal, the right to the use of the name by which the thing is known becomes equally universal. It matters not that the inventor coined the word by which the thing has become known. It is enough that the public has accepted that word as the name of the thing, for thereby the word has become incorporated as a noun into the English language, and the common property of all."

A name cannot be the common property of all and at the same time have a secondary meaning which makes it the special property of one manufacturer. For, if one manufacturer has a right to prevent all other manufacturers from using a name in usual and customary ways, that is, without mortifying cautionary notices the publication of which convey to the public a suggestion of confessed inferiority, and add a heavy expense to the advertising bill, the name no longer is common property; for one manufacturer alone has the full and untrammelled enjoyment of it.

Therefore "Webster's," as the title of copyrighted matter, being, by law, a public name, no one can have nor acquire any "secondary meaning" rights in it.

B.

What is the "secondary meaning" claimed?

If the Court rejects the foregoing proposition of law, then it will be necessary to inquire what is the exact secondary meaning claimed, before an examination of the evidence is made to ascertain if such meaning exists.

In its bill of complaint appellant alleged that the title "Webster's" in a dictionary had come to signify to the public that the book "was prepared, proof-read, printed, bound and published" by it (fols. 124, 129); but it has abandoned the claim that that title signifies that it printed, bound or published the book,¹ and now claims only that the title "Webster's" signifies that the literary contents of the book was prepared by its lexicographers—in other words that "Webster's" is a *nom de plume*.

Appellant's latest and most important publication, entitled "Webster's New International Dictionary," is, to use the language of complainant's witness,

"a book of almost totally different literary contents than [sic] any book with which Dr. Noah Webster had anything to do" (fol. 701).

¹ At page 29 of its brief appellant says: "Thus, ordinarily, not one in a thousand calling for a copy of Webster's Dictionary knows or cares anything whatever about the name of the actual printer or publisher."

Appellant claims that "Webster's" in the title of the above book and in the titles of its other books does not convey to the public the idea that Noah Webster is the author of any part of the book, nor imply that the book is "based" upon Noah Webster's own work; it claims that "Webster's" has become a fanciful name which means to the public "Merriam's," and nothing more nor less.

At page 100 of complainant's brief submitted at the final hearing, Mr. Hale said, referring to the Merriam's Company's dictionaries:

"Its books are called 'Webster's' not because Noah Webster is their author—he died nearly 70 years ago; and not because they are 'based' upon Noah Webster's own work—they are substantially and almost totally different books; they are called 'Webster's' dictionaries because * * * that name has come to mean that a dictionary so marked is a book made by the Merriams."

At page 78 of his brief, on the motion for a preliminary injunction, Mr. Hale stated complainant's position as follows:

"Noah Webster is not the author of any of complainant's dictionaries, he having died more than sixty years ago. The use of the name 'Webster' upon complainant's series of new and revised dictionaries is in no manner descriptive of authorship. On the contrary, it is a purely arbitrary use of the name of a celebrated lexicographer to designate complainant's productions and to distinguish them from like publications

of others. The name has acquired that significance. Such names so used are valid trademarks."

Therefore, the fundamental question of fact before the Court is whether the name of the most celebrated of all American and, perhaps, of all English lexicographers, when used in the title of dictionaries, has wholly lost its descriptive signification indicative of Webster's authorship, and has become an arbitrary, fanciful trade name which signifies to the public nothing more nor less than that the dictionary so entitled is produced by complainant's publishing house.

Throughout the brief filed on this appeal the claim is made that the name "Webster's" has a meaning even more restricted than the above, signifying only the "recent and current copyrighted dictionaries of the complainant" (Appellant's Brief, p. 45).

This restricted meaning is claimed in order to exclude every one from the right to apply the name, without qualifying suffixes, to the various "Webster's" dictionaries copyrighted from 1806 until 1870, all of those books (including complainant's 1847 and 1864 editions) being now in the public domain.

Not only is the claim absurd on its face; but, if "Webster's" meant only the Merriam's recent and current copyrighted editions, appellant would be guilty of a fraud on the public because it is now publishing and selling the following old editions:

"Webster's Unabridged Dictionary," a cheap reprint of the 1864 edition, sold with the date 1909 on the

title page¹, three smaller books which are abridgments of the 1864 edition, but are sold with modern dates on the title pages², the International, its 1890 edition³, and two abridgments thereof⁴.

C.

Whether the alleged secondary meaning exists is a question of fact to be determined solely upon the evidence in this case; in the determination of that fact, prior adjudications cannot properly be considered by the Court.

As Lord HALSBURY said in *Cellular Co. vs. Maxton* (1899 A. C., 344), on the question whether "Cellular," as applied to cloth, had a secondary meaning :

¹ "WEBSTER'S UNABRIDGED DICTIONARY" (fol. 2644) \$2.50 to \$5. This is a cheaply constructed reprint of the 1864 edition (fols. 715, 4012), sold with the date 1909 on the title page (fol. 2844). The copyright on the 1864 edition expired in 1906; so that it is in the public domain.

² "WEBSTER'S NATIONAL PICTORIAL DICTIONARY" (fol. 2642) \$3. The main vocabulary of this book was compiled and copyrighted in 1867. The book as described in its preface (See Deft's Exhibit No. 2) is a revision and enlargement of the 1856 octavo abridgment of Webster's "American Dictionary" of 1847. The revision was made on the basis of the 1864 edition. It does not appear that the main vocabulary of this book has been revised in the slightest degree since 1867, although certain appendices were added in 1884 and 1886 (fols. 2795, 2803, 3026 and 3032). The copyright on the main vocabulary expired in 1909.

³ "WEBSTER'S CONDENSED DICTIONARY" (fol. 2644) \$1.25 to \$1.50. This book was "compiled and copyrighted in 1884" (fol. 2286) and is based upon the 1864 edition. Printed from the old plates (fol. 663) without material change it is to-day sold as the "Twentieth Century" edition of Webster's dictionary (fols. 661, 6879, 6886, 6895, 6933) with the date "1911" on the title page (fol. 4326). See Deft's Exhibit offered in evidence (fol. 4328).

⁴ "WEBSTER'S PRACTICAL DICTIONARY" (fol. 2645) 40 cts. to 80 cts. This is a little book compiled and copyrighted in 1884 (fol. 2784). It is based on the unabridged edition of 1864 (fol. 2782).

⁵ "WEBSTER'S INTERNATIONAL DICTIONARY" (fol. 2636) \$10.75. This is a large book first published in 1890.

⁶ "WEBSTER'S COLLEGIATE DICTIONARY" (fol. 2638) \$3 to \$5. This is an abridgment of the large 1890 book.

⁷ "WEBSTER'S LITTLE GEM DICTIONARY" (fol. 2640) 25 cts. to 50 cts. This is a very small pocket dictionary abridged from the large 1890 book.

" I should like to point out here that, as we are dealing with a question of fact and not of principle, no previous case can be any authority."

To prejudge this question of fact on evidence and arguments submitted in another case in which this appellee was not a party would be to deny it due process of law, especially as the question of " secondary meaning " went by default in that case, defendant preferring to " confess and avoid."

But, were the foregoing not true, there is no prior adjudication which ought to prejudice the Court in favor of the appellant's claims.

The claim of the appellant to exclusive rights or semi-exclusive rights in the name " Webster's " as used in the dictionary business has been several times before the Courts. In each of the cases in which it has been considered any such privilege has been refused them, one Court calling their claims of this sort " all nonsense " (43 Fed., 450), and another perpetually enjoining them from claiming any such exclusive right (159 Fed., 640). In one of these cases, however (*Ogilvie vs. Merriam*, 149 Fed., 856 ; 159 Fed., 167), and in another case in which the *Ogilvie* decision was held to be *res adjudicata* (*Merriam vs. Saalfeld*, 190 Fed., 927 ; 198 Fed., 369), statements occur in the opinions to the effect that the name " Webster's " had acquired a " secondary meaning ", although this holding was in no way necessary to the decision of the case in which the opinion was rendered, such injunction as was issued in the case being issued by reason of the fact that the defendant was found to be doing some unfair

act entirely aside from its use of the name "Webster's."

The first and only finding of "secondary meaning" on evidence submitted was made by Judge COLT in *Ogilvie vs. Merriam*, 149 Fed., 856.

What Judge COLT meant by "secondary meaning" is difficult to understand in view of the fact that he held that

"Ogilvie had the same right as the Merriam Company to publish and sell revised editions of Webster's work and to use the name 'Webster's' in the title, and this public right cannot be taken away or abridged on any theory of trade-mark or unfair competition, such as is now advanced by the Merriam Company. * * * When the word 'Webster' as applied to dictionaries has once become dedicated to the public, it is not again subject to exclusive appropriation as a trade-mark or trade-name, nor can the public be deprived of its use on the ground of unfair competition" (149 Fed., 863).

Also he enjoined the Merriam Co. from

"in any manner claiming that it * * * has the exclusive right to the use of the name Webster's in the title of dictionaries."

Yet, the inconsistent holding that "Webster's" had a "secondary meaning" implied that the Merriams had rights in the name superior to those of the general public and might prevent competitors from using the name in the usual way, namely, without cautionary notices. We think that Judge COLT's statement regard-

ing "secondary meaning" was an *obiter dictum*; for he granted no injunction restricting the manner of Ogilvie's use of that name as the title of his book, by requiring a cautionary notice, and the finding of "secondary meaning" was wholly unnecessary to warrant the injunction which he granted against Ogilvie's deceptive advertisements.

Ogilvie was entirely satisfied with this decision, since it imposed no restrictions on his use of the name "Webster's," and did not appeal therefrom, and in successive phases of the Ogilvie-Merriam-Saalfeld litigation he announced his acceptance of Judge Colt's finding of "secondary meaning."¹

¹ At page 2 of his brief filed on the first appeal from Judge Colt's decision (See Bar Association Records, First U. S. Circuit Court of Appeals, Vol. 135) Ogilvie's counsel said :

" The case was finally and fully heard on June 12 and 13, 1906, by Hon. LeBaron B. Colt, whose opinion was filed with the Clerk of the Circuit Court, January 9th, 1907 (Record, Vol. V., p. 3008).

" In accordance with and pursuance of this opinion a final decree was entered by direction of the court, Feb. 28, 1907 (Record, Vol. V., p. 3005), with which decree complainant Ogilvie (defendant in cross bill) appellee in this court, is content, and from which he has not taken an appeal."

In the Circuit Court of Appeals for the Sixth Circuit in the case of Merriam vs. Saalfeld on Merriam's appeal (190 Fed., 927), Saalfeld was represented by Ogilvie's former lawyer. At page 30 of his brief on that appeal Saalfeld's counsel said :

" 2. The new evidence for complainant is mainly directed to an attempt to prove propositions which, if they ever were issues, are such no longer. What is comprised in pages 97 to 116 of Record merely reasserts former evidence in the Boston suit. That included in pages 122 to 150 goes to show merely that the name ' Webster ' is connected in the public mind with complainant's dictionaries, that is, the evidence indicates ' secondary meaning ' of the name.

" That the word ' Webster ' has such secondary meaning was found to be a fact by the Circuit Court in Boston (Opinion of Justice Colt, Exhibit, Vol. V., Transcript of Record, Boston suit, p. 3009). It has not been an issue since."

Upon taking up the present case, we found, much to our surprise, that all of these statements regarding this "secondary meaning" were avowedly based solely upon Judge COLT's finding of fact in the *Ogilvie* case to the effect that "from 1847 to 1889 the Merriams were the sole publishers of Webster's dictionaries;" and upon the assumption that the Merriams were the "original" publishers of Webster's dictionaries.

Were these statements true, the Merriams might possibly have argued that, by reason of exclusive association with their publications, from the beginning until 1889, "Webster's" had acquired a "secondary meaning," indicating Merriam publications only, though a complete answer to that argument would be that the Merriams themselves had never used the name otherwise than in its original generic sense.

But these statements are unqualifiedly false.

The fact is that fifteen publishers other than the Merriams published various editions of Webster's dictionaries during the period from 1847 to 1889, and there is every reason to believe that they published a far greater number of books than did the Merriams.

In the present case another fact which has been brought to the Court's attention for the first time is that since 1889, the sales and advertisements of "Webster's" dictionaries published by Merriam's *fifty-two* competitors have greatly exceeded the sales and advertisements of the Merriam's "Webster's," and it is also true that the dictionaries entitled "Webster's" dealt in by their competitors have been sold and have been in circulation eight years longer than they

had been when Judge COLT made his finding (see *infra*, pp. 181-194).

Another fact which wholly differentiates the present case from the *Ogilvie* and *Saalfeld* cases is that, in the present case, it appears for the first time that the latest and principal publication for which the Merriams ask equitable protection is sold by them under the title "*Webster's* New International Dictionary," although their own witness testifies that it is "a book of almost totally different literary contents than any book with which Dr. Noah Webster had anything to do" (fols. 698, 701).

In the *Ogilvie* case, the Court did not have to decide, as this Court must decide in the present case, in order to justify complainant's use of the title "*Webster's*" on the above book, that "*Webster's*" has wholly lost its generic signification as the name of Webster's work, and has acquired a meaning which makes it a truthful title for a dictionary containing none of Webster's work.

Had Judge HAND or Judge NOYES found it necessary to decide whether the evidence in the present case supported the Merriams' pretensions that the name "*Webster's*" had acquired a "secondary meaning" we feel no doubt that they would have rejected that claim as wholly negated by the evidence.

Judge HAND preferred, however, to dismiss the complaint on a different ground, out of deference to the First Circuit, leaving the question of "secondary meaning" to be passed upon by a Court of equal rank. He pointed out, however, in his opinion, that the question

of "secondary meaning" was not contested before the First Circuit in the *Ogilvie* case nor before the Sixth Circuit in the *Saalfield* case, and that the findings of "secondary meaning," in those cases, were based on the fundamental errors of fact above referred to. We quote from the part of his opinion to be found in Vol. III. of the Record, at page 2068 :

"I have decided this case upon the assumption that the word, ' Webster ', had acquired a secondary meaning indicating at once the derivation of the work and its responsible compiler. That assumption I make in deference to the decision in the First Circuit, though it is in no sense authoritatively binding upon me. There are several reasons why, if it were necessary, I should not hesitate to re-examine that question of fact. In particular the defendant in that case did not contest the question, at least, after the first decision, as his briefs show, nor did he contest it in the case in the Sixth Circuit. *Moreover, the record must have been quite different in that case for Judge COLT to say that no one but the complainant published any Webster dictionaries between 1847 and 1889, a fact abundantly disproved in the case at bar.* I need not here decide the question of secondary meaning, and I accept, since it has not been necessary to question it, the result of the decision in the First Circuit, which is the first success the complainant has ever had in its long and persistent efforts to establish a monopoly over the word ' Webster.' Nevertheless, this case can never be truthfully cited as in the slightest degree contributing to the establishment of that result, or indicating that I assent in any

way to the claim of secondary meaning. That question I leave exactly as I find it, without deciding that the meaning exists, that it does not exist, that it has been proved, or that it has not been proved."

Judge NOYES, on the appeal, said :

"Taken as a whole we fully approve Judge HAND'S opinion, and upon it affirm the decree appealed from. In so doing, however, we must not be regarded as assenting to the proposition that the name "Webster's Dictionary" has a technical or secondary meaning as indicating a publication of the complainant" (Rec., Vol. III., page 2094).

Therefore we earnestly hope that this Court will approach the consideration of the question of fact of "secondary meaning" wholly unprejudiced by the decisions in the *Ogilvie* and *Saalfeld* cases.

D.

A "Secondary meaning" is a trade-mark, and exists only where a name, originally descriptive, has wholly lost its descriptive signification.

WHAT IS "SECONDARY MEANING"?

Discussion of the rules of law relating to secondary meaning is found in cases involving unfair competition of various sorts. In almost every unfair competition case the principal object sought by the plaintiff is immediate relief from unfair practices,—the question of accounting

being of decidedly secondary importance. In fact, in these cases the question of an accounting seldom arises. It is only necessary to search for cases containing rules as to accountings in unfair competition cases, to realize how rare such cases are. Despite this fact, however, there are many unfair competition cases, the deciding question in which is the existence or non-existence of secondary meaning; and the result of this is the existence of many opinions on the question of secondary meaning, which have been rendered with little or no regard to the question of accounting. Apparently these cases have been decided without full realization of the fact that some day these very decisions must inevitably be used as binding precedents in some unfair competition case of large magnitude, like the one at bar, not only as authority for injunctions against unfair practices, but as authority for the existence of rights in the owner of this secondary meaning trade-mark, one of which oftentimes is the right to demand an accounting.

In a case where the only relief sought is an injunction, it matters little on what basis the relief is granted. But in this case, the principal relief sought is not relief from unfair practices. No unfair practices on the part of the defendant have been proven, unless the mere use of the name "Webster's" was unfair. The object of this action is first, to establish a secondary meaning in the name "Webster," and, secondly, using that secondary meaning as a basis, to appropriate the profits of the various successful competitors of the complainant, through accountings, in cases similar to the

present one. If the complainant succeeds, in the case at bar, in securing a recognition of its alleged "secondary meaning" rights, it might, except for counterbalancing equities, mean a recovery of from \$50,000 to \$100,000.

It therefore becomes vitally important to know what secondary meaning is, and whether or not such a right is possessed by the complainant.

A "secondary meaning" confers a monopoly of greatest value.

The House of Lords, *Cellular Co. vs. Maxton*, 1899, A. C., pp. 339, 340, speaking, not of the exclusive rights conferred by a technical trade-mark, but of the semi-exclusive rights conferred by a secondary meaning, said :

"If a person * * is * able to acquire the right to appropriate a word or term in ordinary use in the English language to describe his goods and shut others out from the use of this descriptive term, he would really acquire a right much more valuable than either a patent or a trade-mark, for he and his successors in business would gain the exclusive right not for a limited time, as in the case of a patent, but for all time coming to use the word as applicable to goods which others may be desirous of manufacturing and are entitled to manufacture and sell as much as he is. This being so, it appears to me that the utmost difficulty should be put in the way of any one who seeks to adopt and use exclusively as his own a merely descriptive term."

But the complainant assures the court that it claims no monopoly—asks no privilege. It merely asks that the court grant an injunction just as Judge COLT did—nothing more. *But that injunction if issued on the ground that a “secondary meaning” has been established as a fact, might unjustly penalize the defendant to the extent of \$50,000 to \$100,000.*

Judge COLT in the *Ogilvie* case, neither ordered an accounting nor even required that a cautionary notice should accompany Ogilvie's use of the name “Webster's”, and the Court of Appeals of the First Circuit, before whom Judge COLT's finding was not contested, ordered no accounting, so that they had no occasion to consider the real meaning and far reaching consequences of such a finding.

Finally, however, the Circuit Court of Appeals of the Sixth Circuit, (in the *Saalfeld* case) accepting “secondary meaning” as *res adjudicata*, ordered an accounting of the defendant's profits from the sale of all its dictionaries entitled “Webster's”, assuming that a finding of secondary *should* mean, and therefore that Judge COLT's finding *did* mean

“that, in that trade and to that branch of the purchasing public, the word or phrase had come to mean that the article was his product *in other words, had come to be to them, his TRADE-MARK.*¹ So it was said that the word had come to have a secondary meaning, although this phrase, ‘secondary meaning,’ seems not

¹ Italics ours.

happily chosen, because, in the new field, this new meaning is primary rather than secondary; that is to say, it is, in that field, the natural meaning"¹ (*Merriam vs. Saalfeld*), 198 Fed., at p. 373).

The court might grant an injunction on either of two grounds:

(1) because defendant has acted unfairly, aside from its use of the Webster—a claim not seriously urged and discussed, *infra*, at pp.

(2) because it has used the name "Webster's."

To enjoin us on this latter ground the plaintiff must show some better rights in this public name than the rest of the public possess. To prove such better right, it *must* show that that this word has *lost* its original and natural meaning, indicating matter written by Webster, and that the name has now come exclusively to mean any dictionary published by the Merriams, including their last which contains practically none of Webster's work (fols. 697-701).

In a word, appellant must prove, as Judge DENISON said, that "Webster's" is its trade-mark.

The principal difference between a technical trade-mark and a "secondary meaning" trade-mark is in the method of proving that the mark indicates origin

¹ The Court said, also, that a "secondary meaning" trade-mark "differs from a technical common law trade-mark mainly, if not wholly, in the fact that the proprietor's right is not of absolute, but qualified exclusion."

² The "Uncle Sam" advertisements are discussed at pages hereof.

or ownership. The former, on its face, being free from descriptive signification, indicates origin and ownership as the result of first adoption, while the latter, being descriptive on its face, must be proven to have lost its descriptive significance in the branch of trade where it is sought to be monopolized, before any presumption can arise that its use by anyone except the privileged trader would result in deception.

Judge COXE, in his opinion below, said of the *Ogilvie and Saalfeld cases* (see discussion of these cases, Appendix, pp. 212-19):

"These decisions, *so far at least as this court is concerned*,¹ have established the following propositions:

FIRST. The name "Webster" has a two-fold signification, in that it is the generic name of the dictionary and is also associated in the public mind with the dictionaries published and sold by the Merriam Company.

This squarely raises the most important question of law herein—

Can a name which is constantly being used in some branch of the trade in its generic sense, be at the same time withdrawn from public use, in that branch of the trade, as the name of one man's goods?

Can the name "Flaked Oatmeal" be the name *both* of any and all oats that are flaked and, at this

¹ Italics ours.

same moment, mean oatmeal baked *only* by Parsons of Sydney, Australia? (198 A. C., 239.)

Can the name "Webster" be the name of Webster's work in any and all dictionaries, by whomsoever published, containing Webster's work, and, at the same moment, mean a dictionary published *only* by Merriam?

Though many loose expressions are to be found in the opinions of our lower Courts in so-called "secondary meaning" cases, we believe that no English decision nor any decision of our Supreme Court nor of our Circuit Courts of Appeals will be found holding that a "secondary meaning" can exist in a descriptive word, unless it appears "that its original or apparent meaning has been wholly lost, or does not exist amongst those who are purchasers of the goods in question" (See Kerly, p. 509, quoting LORD HERSCHELL). Or "that the public have not needed the word (Camel hair) to describe a particular kind of belting" (LORD HERSCHELL, Reddaway vs. Banham House of Lords).

The thought is expressed by "Kerly on Trade-Marks" (p. 511) as follows:

"The possibility of proving that a word which is *prima facie* descriptive is in reality a trade name, is not an exception to the well-settled rule that *no case of passing off can be made out merely by showing that the defendant has adapted and used a descriptive or other "open" word previously used by plaintiff.*¹ Any trader is

¹ Italics ours.

entitled to affix a true description to his goods in ordinary language ; but, if words are used which have LOST their ordinary descriptive meaning and have acquired a new meaning which is not descriptive, they no longer constitute a true description."

We, therefore, believe that it is not possible for any word to get this "secondary" meaning ("new primary" meaning or "trade-mark," as Judge DENNISON calls it), so long as it is still used by any considerable proportion of the public in that branch of trade in its *old* primary sense.

We have said that Webster's own writings are still largely used by the public and that "Webster's" is the only name by which Webster's writings which are still used are known. Speaking of "Castoria," a name of a patented medicine in which the patent had expired, Judge BREWER, then on the Supreme Court of the United States, said, in answer to the claim that by long user and exclusive association, during the patent monopoly, the name had acquired a "secondary meaning," indicating a medicine made by complainant :

"As well might a manufacture of flour claim a trade-mark in the word 'flour' as the manufacture of 'castoria' a trade-mark in that name" (*Centaur vs. Heinsfurter*, 84 F., 958)."

Justice BREWER also said :

"It is true that during the life of a patent the name of the thing may also be indicative of

the manufacturer, because the thing can then be manufactured only by the single person; but, when the right to manufacture and sell becomes universal, the right to the use of the name by which the thing is known becomes equally universal."

This proposition of law is frequently misunderstood, largely because of the misunderstanding of the *Camel Hair Belting* case¹ and the case of *Singer vs. June* (163 U. S., 169), both of which cases are universally cited in all unfair competition discussion of this sort.

*The Camel Hair Belting Case.*¹

The Camel Hair case is generally supposed to hold, as one of our judges has said, that "the words camel hair belting, *descriptive of a belting made of camel's hair*,² were protected against use in such a manner as to deceive purchasers," etc. (118 Fed., 965 C. C. A.).

The fact is, however, that, instead of the name being at the time the case was tried, as the Circuit Court of Appeals said, "descriptive of a belting made of camel's hair," the name, in the hair-belting trade, was wholly devoid of that descriptive significance and was wholly fanciful.

The facts in the case were these:

Plaintiff made and sold in India and elsewhere a belt made of woolen components known generally as

¹ Redaway vs. Banham 9 R. P. C. 503; on appeal, 12 Common Court of Pleas, 83, and in the House of Lords, 1896 A. C. 199, 18. R. P. C. 288.

² Italics ours.

"brown worsted yarn." As a trade name for it he used the image of a camel (by which most Indian natives recognized it) and the names "Camel," "Camel Brand," or "Camel Hair." In India, which was his principal market, different makers of beltings were identified by the names of different animals, each associated with one manufacturer, as "Yak," "Buffalo," etc. It was not known to the consumers, as far as appears, that "Camel" or "Camel Hair" described in any way the material of which the belting was composed.

Lord MacNaghten explains the *discovery* that there was camel's hair in the belting, as follows :

"The action was launched on the theory that 'Camel Hair Belting' was a fanciful term. But in the course of the trial it was proved, partly by the evidence of experts and partly by an exhibit collected from a living animal in the Zoological Gardens at Manchester, that the camel hair of commerce, of which many bundles were produced, were really and truly, for the most part, composed of genuine camel hair. This evidence seems to have come as a revelation to Reddaway and his advisers. However, they accepted the situation, and forebore to contest the doubt further. And so it was established that Reddaway's trade designation, instead of being, *as everybody supposed, a fanciful term*,¹ was nothing more nor less than a substantially accurate description of the material of which his belting was composed."

¹ Italics ours.

The Court found, however, that in the trade where Reddaway used the name, it had no descriptive signification, and was understood as a wholly fanciful name which described no fact except that the belting was made by Reddaway.

This case is the *cause celebre* of the law of secondary meaning—the most extreme case of all—and, as will be seen from what has just been quoted from the opinions, it is generally misunderstood. The fact is that the reputation of Reddaway's product under the name "Camel" or "Camel Hair" belting was acquired not when the consumers understood the belting was made of camel's hair but when he and everybody else thought that the name was a fanciful name for Reddaway's make of belting, made, not from the hair of camels, but from brown worsted yarn.

*The Singer Case.*¹

Turning now to the Singer case, we find an authority holding the term "Singer Sewing Machine" is a generic, public, open word, like "flour," or "flaked oatmeal," and at the same time holding that a manufacturing Company named Singer has the power to compel the general public to limit its use of this name *in its generic sense*.

This seems squarely in conflict with what has just been said. The reason for this is not far to seek.

A person named Singer was the founder of this

¹ 163 U. S., 169.

business in 1850. He was succeeded by the Singer Manufacturing Company, a corporation. The success of the concern had been phenomenal. Its business ran into millions of dollars annually with the inevitable result that a very valuable good will was created, which was derived partly from the patented qualities of the machines it dealt in, but largely from qualities and a reputation personal to the Singer Company as manufacturer. Those latter qualities were attached to the *owner of the good-will*, the "Singer" Company, or "Singer Manufacturing Company." It was a mere coincidence that the name of the patented article happened to be the same as the name of the manufacturer. *That coincidence in that particular instance did not change a rule of law.* This name "Singer" stood for excellence in selecting materials, skill in putting them together, fair dealings with its customers, reputation for a reliable product and notoriety from wide advertising. This good will was a most valuable asset.

In 1876 the patents expired. The evidence established that the name "Singer," though it had originally and for a long time signified solely the manufacturer of that name, had been the only name used to describe the patented machine, and therefore had come to be its only descriptive designation. As the right to make the machines was now public property the right to use the only name which described them also became public property.

The day the patent expired two rights existed.
(1) The pre-existing and still existing right of

the Singer Manufacturing Company to its good will as a manufacturer attaching to its name "Singer Manufacturing Company" or "Singer" which conferred a right to prevent any competitor from stealing that good-will by deceiving the public into the belief that such competitors' product was manufactured by the "Singer" Company; and (2) the right of the public to use the only name by which the machine was known, as its generic name.

Confusion arose in the exercise of these respective rights, and the Court held that the Singer Company would unjustly suffer injury unless those of the public exercising the right to use the name Singer *as the name of the sewing machine* exercised it in such a way as not to steal the Singer Company's good will in the word "Singer" *as the name of the manufacturing concern*.

There is nothing in the case which holds that the Singer Company had any greater rights to use the name of the sewing machine than anyone else had. If the fundamental rules of the law of trade-marks are taken into consideration in reading the case it is without sense or meaning, construed in any other way than the above.

The fact that the case is constantly misunderstood, misquoted and misconstrued, is due solely to the circumstance that in that particular instance the generic name of the machine happened to be the same as the manufacturer's name to which the good will of this corporation attached. What the Court had in mind on this point is clearly shown by the cases which it

cites, all of which goes to the proposition that a duty rested upon the defendant, *because of the similarity of the name of the manufacturer and the name of the machine*, to use the name "Singer" fairly, and sums up by laying down the general rule that where another avails himself of the right which everyone possesses to make the machine and use its generic designation

"he can do so in all forms, etc. * * * subject, however, to the condition that the name must be so used as not to deprive others of their rights or to deceive the public" (p. 200).

So far this statement of law is fully in accord with all other decisions in the law of unfair competition. The Court, however, continues,

"and therefore that the name must be accompanied with such indications that the thing manufactured is the work of the one making it as will unmistakably inform the public of that fact" (p. 200).

Two constructions can be placed upon this language:

One is that when the acts of the defendant will undoubtedly result in unfair competition from his use of the generic name of the patented article because, for instance, it happens to be the identical name of some manufacturer with whom the public has long identified the article—viz., "Singer" machines and "Singer"

Company—then “the name must be accompanied with such indications, etc.,” as are necessary to prevent a belief that the name is being used as the name of the manufacturer. That this is the proper construction is shown by the fact that the Court ordered no suffixes or other qualifying expressions to be used, but only ordered defendant (whose name was *not* Singer) to accompany its use of the name “Singer” with conspicuous markings of its name “June Manufacturing Company.”

The other construction, and one which is sometimes made, is that *every use* of a generic name of an article on which a patent or copyright has expired *must* be accompanied at least by the name of the new manufacturer.

The latter construction is obviously foolish and not that intended by the Court; for, in the Elgin Case it laid down the rule that, in unfair competition cases, where no word is involved which can be exclusively appropriated by the plaintiff, “the whole matter lies *in pais*” (179 U. S., 677), and, in the *Castoria* case (84 Fed., 958), Justice BREWER, who was one of the judges who sat in the *Singer* case, held that the freedom of use of the generic name Castoria, after the expiration of the patent, could not be in any way restricted or regulated in the absence of affirmative proof of unfair competition in some respect other than the mere use of the name.

Applying the foregoing to the case at bar, the conclusion irresistibly follows that the *Singer* case would apply here only in the event that the

Merriam's name had been "Webster Dictionary Company" or "Webster Company."¹

See "Ludlow" Valve made by Ludlow Mfg. Co., 166 Fed., 26.

"Dover" Egg Beater made by Dover Stamping Co., 166 Mass., 191.

No such coincidence as that is here present, and the general rule of trade-mark law must apply, viz. : *that no secondary meaning can exist in the name "Webster" so long as the public necessarily must use it, in the dictionary trade, to describe Webster's work.*

THE STONE ALE CASE: *Montgomery vs. Thompson*, 8 R. P. C., 361; H. L., 1891; A. C., 217.

The plaintiffs had made ale in the town of Stone for more than a hundred years. It came to be known by the name of Stone Ale. The name "Stone" was never in any sense descriptive of ale. This was merely a geographic name, used in a fanciful sense, and which had, after 100 years of exclusive user, lost, in the brewing trade, any descriptive meaning. The same is true of cases like the *Glenfield Starch* case, L. R., 5 H. L., 508; the *Waltham Watch* case, *American Co. vs. U. S. Co.*, 173 Mass., 85.

Referring to the *Camel Hair Belting* case, the *Glenfield Starch* case, etc., FULLER, C. J., has said :

"These and like cases do not sustain the proposition that words which, in their primary

¹ We have not adverted to the fact that, in the *Singer* case, defendant was found guilty of unfair practices which necessitated the regulation of its use of inevitable similarities. It is evident that no injunction would have been issued had the only alleged offense been, as here, the use of the public name.

signification, give notice of a general fact and may be used for that purpose by everyone can lawfully be withdrawn from common use *in that sense*" (Elgin vs. Illinois, 179 U. S., 965-67).

It is useless to multiply these cases in which words have been held to have acquired this secondary or "new primary" meaning in a particular branch of trade. None of them, we believe, is authority that similar rights can be acquired in a word so long as any considerable number of the public uses it, in that branch of trade, in its generic sense.

E.

Rules of law governing proof of secondary meaning.

Distinct rules of law exist which must be complied with by one who seeks to prove that a name has lost its original meaning and acquired a secondary or commercial one. They are as follows :

Rule I.

The Burden on the Complainant.

"It was for the appellants to establish, if they could, that an ordinary word in the English language properly applicable to the subject matter of the sale was one which had so acquired a technical and secondary meaning differing from its natural meaning that it could be excluded from the use of every one else. That is the proposition the pursuers had to make out."

This statement is by Lord HALSBURY, Chief Justice of England, in *Cellular Co. vs. Maxton*, 1809, A. C., 344-6-7, speaking of the fact that the case involved the question of *secondary meaning* in the name "Cellular" as applied to clothing.

Rule II.

"The utmost difficulty should be put in the way of any one who seeks to adopt and use exclusively as his own a merely descriptive term." *Cellular Co. vs. Maxton* (1899), A. C., 340).

"I still think that it should be made almost impossible for any one to obtain the exclusive right to the use of a word or term which is in ordinary use in our language and which is descriptive only; and, indeed, were it not for the decision in *Reddaway's case*,¹ I should say this should be made *altogether impossible*."²

This was said with reference to a semi-exclusive claim of right, or "secondary meaning."

"If the word or name is *prima facie* descriptive or be in general use, the difficulty of establishing the probability of deception is greatly increased" (Kerly, 274).

Rule III.

"The more clearly descriptive the name * * * the more difficult it is to make this proof," namely, that it has acquired a secondary meaning.

The above statement is by Mr. Rogers, one of the

¹ *Reddaway vs. Banham*, 1896, A. C., 190 (Lord SHAND).

² Italics ours.

counsel for the Merriams in the Saalfeld case, in an article in 3 Illinois Law Review, 553.

Kerly at page 509, continues :

“ And the more appropriate the words claimed are, as a description of the goods or of some characteristic of the goods, the greater is the burden of proof required from the plaintiff. If the plaintiff has had a monopoly in fact of the goods his difficulty is increased.”

“ “ In all these cases if the primary meaning of a word is a simple and easy primary meaning, known to everybody, it is extremely difficult to establish that in any particular trade this word has lost its well-known and original meaning, and in that trade acquired a secondary meaning to the exclusion of the natural and original meaning of the word,’ per VAUGHAN WILLIAMS, L. J., in *Hommel vs. Bauer & Co.*, 22 R. P. C., 43 (1905).”

Rule IV.

Even tho the name indicates one dealer, only, among many persons, nevertheless, if it retains its primary descriptive meaning among any considerable number of persons it has no secondary meaning.

This proposition is very clearly stated by Kerly in his recent book on Trade-Marks, page 509; in discussing, not technical trade-marks, but names which have become trade names by acquiring a secondary meaning, he says :

“ Where a word, which is not a ‘ fancy word,’ but is *prima facie* descriptive, is claimed as his

trade name by the plaintiff, he must show that its original or apparent meaning has been wholly lost, or does not exist, 'amongst those who are purchasers of the goods in question'¹ within a definite area. Such area must extend to a large part of England and Wales and include the district in which the defendant trades or purposes to trade. If the word still continues to be used and understood with its original descriptive meaning by any considerable section of such persons, it cannot be monopolized."

In *Cellular Clothing Co. vs. Maxton & Murray*, 25 Session Cases, 4th series, page 1098, at page 1109 (Inner House), LORD McLAREN said :

"The distinguishing feature of the present case is that even if we grant it proved that in the understanding of a large and respectable section of vendors and purchasers of those goods 'cellular' is accepted as a trade name for the pursuers' goods, it is also proved by an equally respectable, though perhaps numerically inferior section of the trade, that 'cellular' cloth in their estimation means only cloth woven in arrangement of small meshes or cells like the pursuers' cloth."

"And therefore when Mr. Anderson (p. 65) and Mr. Higgins (p. 71) say that they have made and sold cellular cloth under that name for years—ten years in one case—and when this evidence is confirmed by a considerable number of wholesale and retail dealers, I think it must

¹ This was L.D. HERSCHELL's phrase in *Reddaway vs. Banham* (1896), A. C., at p. 208; 13 R. P. C., at p. 227.

be admitted that the word 'cellular' has not lost its descriptive signification according to the use of the cloth trade; in other words, that the primary meaning has not been displaced by the secondary meaning which the pursuers allege and have in part proved."

Rule V.

Proof that customers of the plaintiff associate the descriptive name of the article with him does not establish the existence of a secondary meaning.

In *Shove vs. Schmincke*, 33 Ch. Div., 546, 550 (1886).

"Castle Album," was claimed to have secondary meaning as plaintiff's product but the evidence was held insufficient to show this.

Evidence was given that these words were understood in the trade to refer to plaintiff's goods, and there was also evidence to the contrary.

"But several of the plaintiff's witnesses are silent on this subject, and others who have made affidavits do not say more than that the term 'Castle Album' denotes the plaintiff's albums and no others. This may mean that the term denotes the plaintiff's goods to the witnesses themselves, which is very probable, and may be accepted as true; seeing that they are customers of the plaintiff and have received from him all the 'Castle Albums' they have bought. Thus, in their minds, the term would naturally be associated with the plaintiff and goods of his manufacture or selection. But statements to this effect fall far short of the proposition which the plaintiff seeks to establish, viz., that the term is now accepted in the market generally as designating *exclusively* his goods."

Rule VI.

Every person is charged with knowledge that anyone may publish and sell Webster's work.

"Everyone is charged with knowledge of the fact that anyone may make and sell 'Castoria.'"

Centaur vs. Marshall, 38 C. C. A., 413.

This was because the patent had expired.

Here it is because the copyright has expired.

F.

Main argument on the Question of Secondary Meaning.

The proposition of fact which the appellant must establish by a preponderance of evidence should be before the Court during every moment of its consideration of the following discussion of the evidence. That proposition of fact is :

The name "Webster's" in the title of a dictionary has lost its natural, descriptive signification as the generic name of Webster's writings, and has come to indicate solely dictionaries published by the appellant, though wholly different in literary contents from any dictionary which Webster ever had anything to do with.

Appellant has been obliged to abandon the position it took in the Ogilvie case and in its complaint in the

present suit, that " Webster's " indicated Webster's authorship, and, *at the same time*, identified the book as edited, proof-read, printed and bound by it ; because now its principal publication " Webster's New International Dictionary " " IS A BOOK OF ALMOST TOTALLY DIFFERENT LITERARY CONTENTS THAN ANY BOOK WITH WHICH DR. NOAH WEBSTER HAD ANYTHING TO DO " (fols. 701, 768).

Unless " Webster's " has wholly ceased to be the generic name or Webster's writings the title of this book is, as already pointed out, a fraud on the public.

Appellant realizes this, and also knows that, under the law, a secondary meaning cannot exist in a descriptive term at the same time that it retains its primary descriptive signification in the same field. Therefore he boldly asserts that " Webster's " has no other meaning, in that field, except that the book, whatever its literary contents, is published by the Merriam concern.

As appellant has eliminated printing, binding and proof-reading from the meaning claimed, he seems to claim that " Webster's " is Merriam's *nom de plumc*, just as, during Webster's life it was Webster's *nom de plume*. If that is what he means then the name cannot be a trade-mark or quasi trade-mark, and entirely different principles of law are applicable to the case.

Black vs. Ehrich, 44 Fed., 793.

TO PROVE THAT THE GENERIC NAME OF THE LITERARY PRODUCT OF A FAMOUS AUTHOR HAS LOST ITS NATURAL MEANING IS MORE DIFFICULT THAN IN THE CASE OF ANY OTHER DESCRIPTIVE TERM, AND HAS NOT,

WE BELIEVE, HERETOFORE BEEN SUCCESSFULLY ATTEMPTED.

"The proposition that an author can protect his writings by a trade-mark is unique, and at first blush seems somewhat startling. It is certainly offensive to the aesthetic and poetic taste to place such poems as the *Recessional* of the *Last Chantey* in the same category with pills and soap." COXE, J.

Kipling vs. Putnam, 65 L. R. A., 877.

The generic name of a literary composition stands in a class by itself in the difficulty of establishing therein a secondary meaning signifying the product of one commercial house; for any manufacturer who produces the words and punctuation of a literary product produces all of it. Nothing can be added to its substance by exercise of skill by the publisher. However bound or printed it is precisely the same literary product. The manufacturer of a machine, of a pill, or such-like, may add to the qualities of the product qualities personal to him resulting from his care in the selection of materials and skill in putting them together. Consequently, qualities personal to the manufacturer might come to be denoted by the name of a machine or medicine by exclusive association of the name with his manufacture. Not so, however, with a literary product, for the reason above stated.

Appellant recognized the foregoing when it is alleged in its bill of complaint that the name "Webster's" in the title of the dictionaries had become associated ex-

clusively with its proof-reading, printing and binding (See Bill of Complaint, fol. 27). These are qualities personal to its concern and might form the basis of a trade-mark or secondary meaning. But it has made no effort to prove, and there is not a scintilla of evidence in the record tending to prove that any of the foregoing personal qualities has attached to the name "Webster's." It has abandoned, therefore, any claim that the name "Webster's" in the title of a dictionary has come to imply, in addition to its descriptive signification, describing that author's literary product, the added qualities of complainant's proof-reading, printing and binding which are 'personal to the complainant as publisher.

Consequently, it squarely stands on the proposition that this name, originally that of Webster's literary product has ceased to be the name of his writings and has come to be understood as the name of the Merriam concern's writings.

One fact which renders it impossible that Webster's name, in the title of a dictionary, should cease to describe his writings is that *the fame of Noah Webster as the author of a dictionary has been, for a century, and is, to-day, international.* When complainant began to publish Webster's work in 1847 it stated in the preface of that book that

"the name of Noah Webster from the wide circulation of some of his works is known familiarly to a greater number of inhabitants of the United States than the name probably of any other individual except the *Father of his Country.*"

Has the title "Webster's" wholly departed from that famous personality and from his famous dictionary product, and has that name wholly attached itself to one publisher, as the one identifying trade name for its various books? That is what must be proven to establish the secondary meaning which is claimed.

The appellant must further establish that the name has the foregoing meaning not among a few people, only, or in a few localities, but among the great majority of people in the United States and throughout the United States. Among every class of people and in every locality where it fails to show the foregoing extraordinary change of meaning, this Court must assume that the natural meaning remains unchanged. Every purchaser of dictionaries not shown affirmatively to be one who understands the words "Webster's Dictionary" in the foregoing alleged new and improbable sense must be considered a silent witness for the appellee who would testify, if called, that "Webster's" in the title of a dictionary means to him what it naturally signifies, namely, that the dictionary contains matter of which Webster was author.

Let us now examine the evidence to see whether appellant has discharged the almost impossible burden of proof which we have above indicated.

I.

COMPLAINANT WAS NOT THE FIRST USER OF THE TITLE "WEBSTER'S DICTIONARY."

In every case in which a secondary meaning has been adjudicated, the dealer in whose favor

such adjudication has been adjudged was substantially the original adopter of the name, in that particular trade. In the present case it is uncontradicted that for forty-one years before appellants' entry into the field, twelve other publishers had extensively published dictionaries under the title "Webster's Dictionary."¹

2.

APPELLANT WAS NOT THE SUCCESSOR OF THE ORIGINAL PUBLISHER.

We discuss this proposition, not because there is a scintilla of evidence to support the contrary, but because appellant's counsel seems to have induced the Courts in the *Ogilvie* cases to suppose that appellant derived some exclusive rights in the name "Webster" from the original publishers.

Hudson & Goodwin were the original publishers of the 1806 edition, and S. Converse & Company of the 1828 edition. Appellant was not the successor of either one of these publishers.

¹ Their names were :

1806-1840 Hudson & Goodwin, Hartford.

1806-1840 Increase, Cook and Company, New Haven.

1807 and later J. & D. West, Boston.

1828-1840 S. Converse, New York.

1828-1856 N. & J. White, New York.

1830 and later White, Gallagher & White.

1833-1854 F. J. Huntington, New York.

1837-1854 Huntington & Company, New York.

1837-1854 Huntington & Savage, New York.

1839-1853 White & Sheffield, New York.

1840-1853 J. S. & C. Adams, Amherst, Mass.

1843-1853 Harper & Brothers, New York.

Webster was a writer. He never published a single dictionary nor did his heirs. But even had they been, they could not have conferred upon the appellant any property right in the name "Webster's." As Judge WALLACE said in *Black vs. Erich*, 44 Fed. Rep., page 794:

"Neither the author nor proprietor of a literary work has any property in its name. It is a term of description which serves to identify the work."

But neither Webster nor his heirs ever attempted to confer upon the appellant any exclusive rights in the name "Webster's" as the title of a dictionary. The copyright of the 1806 edition entitled "Webster's Dictionary" had already expired in 1834 (fol. 7116), and the copyrights of every succeeding book entitled "Webster's," the publication whereof began before 1870, is in the public domain.

Appellant never acquired from Webster's heirs anything except copyright rights, and these were subject to the licenses previously conferred on various other publishers.

3.

THE WORD "WEBSTER'S" IN THE TITLE OF A DICTIONARY HAS UNIFORMLY BEEN USED AS THE NAME OF WEBSTER'S WORK IN THE BOOK FOR A CENTURY, AND THE ONLY INSTANCE OF ITS APPLICATION TO ANYTHING ELSE IS THE APPELLANT'S LATEST BOOK.

All dictionaries in circulation or published under the title "Webster's" either by appellant or by its

competitors, were, up to 1864, *wholly* Webster's work, and those published from 1864 until 1909, by appellant and its competitors, retained Webster's most famous work, his definitions of the standard words of the language. Therefore the name "Webster's" could not mean anything but Webster's work in these books.

Not classing as revisions the appellant's 1847 edition, which appellant admits

"was little more than the original work of 1828 brought from two volumes into one, pruned of some excrescences, and with moderate additions"

(See Preface to Webster's International), nor the additions, from time to time, of supplements and appendixes, the appellant's first revision of Webster's dictionary was made in 1864. It was entitled "Webster's Unabridged." Its second revision was made in 1890 and was entitled "Webster's International." Appellant still sells both of these editions (fols. 2643, 2635).

In the preface of its 1847 edition appellant said :

"The chief value of a dictionary consists in its definitions. * * * It is in this respect especially that Dr. Webster's dictionary has been generally considered superior to every other both of this Country and of England."

In the edition of 1864 (Preface, page VI.) (which it still publishes) complainant advertises that the revisers had been

"studiously careful * * * to retain the exact language of the earlier edition in every

case possible, esteeming very highly Dr. Webster's plain and clearly expressed definitions for their own sake as well as for that of the author and preferring to err on the side of cautious reverence rather than on that of thoughtless innovation."

In the publishers' note of the 1890 edition (which it still publishes) complainant advertises its preservation of

"those definitions of standard words which were Dr. Webster's especial merit"

and proclaims that the book

"retains that excellence in definitions which has made Webster's the safe and familiar authority to which judge, journalist, scholar, artisan and business man refer."

As all the Webster's dictionaries of its competitors retained this distinguishing matter, it appears that "Webster's" in the title of every dictionary published during the 58 years from 1806 until 1864 contained Webster's work, *only*, and that, from 1864 to date, all dictionaries so entitled (except appellant's 1909 edition) retained as its essential content the most important and well known part of Webster's work, namely, that body of excellent definitions of standard words which was Webster's best known and greatest product.

"Webster's" has, therefore, for 107 years, been used in trade, in its natural sense, that is, as the name of a definite and famous literary product, and could never,

under those circumstances, lose its purely descriptive or generic signification and become the name of a publishing house.

The appellant itself has always used the name "Webster's" solely to indicate the authorship of that part of the book which Webster wrote.

(a) From 1847 to 1890 always, and from 1890 until to-day on its "Unabridged" dictionary it stated in the most conspicuous type used on its title pages that the dictionary was "*by* Noah Webster, LL.D.," and it always separately described, under the names of the authors thereof, the matter contained in the book which Webster did not write ;

(b) It always inserted opposite the title page a full-page engraving of Dr. Webster ;

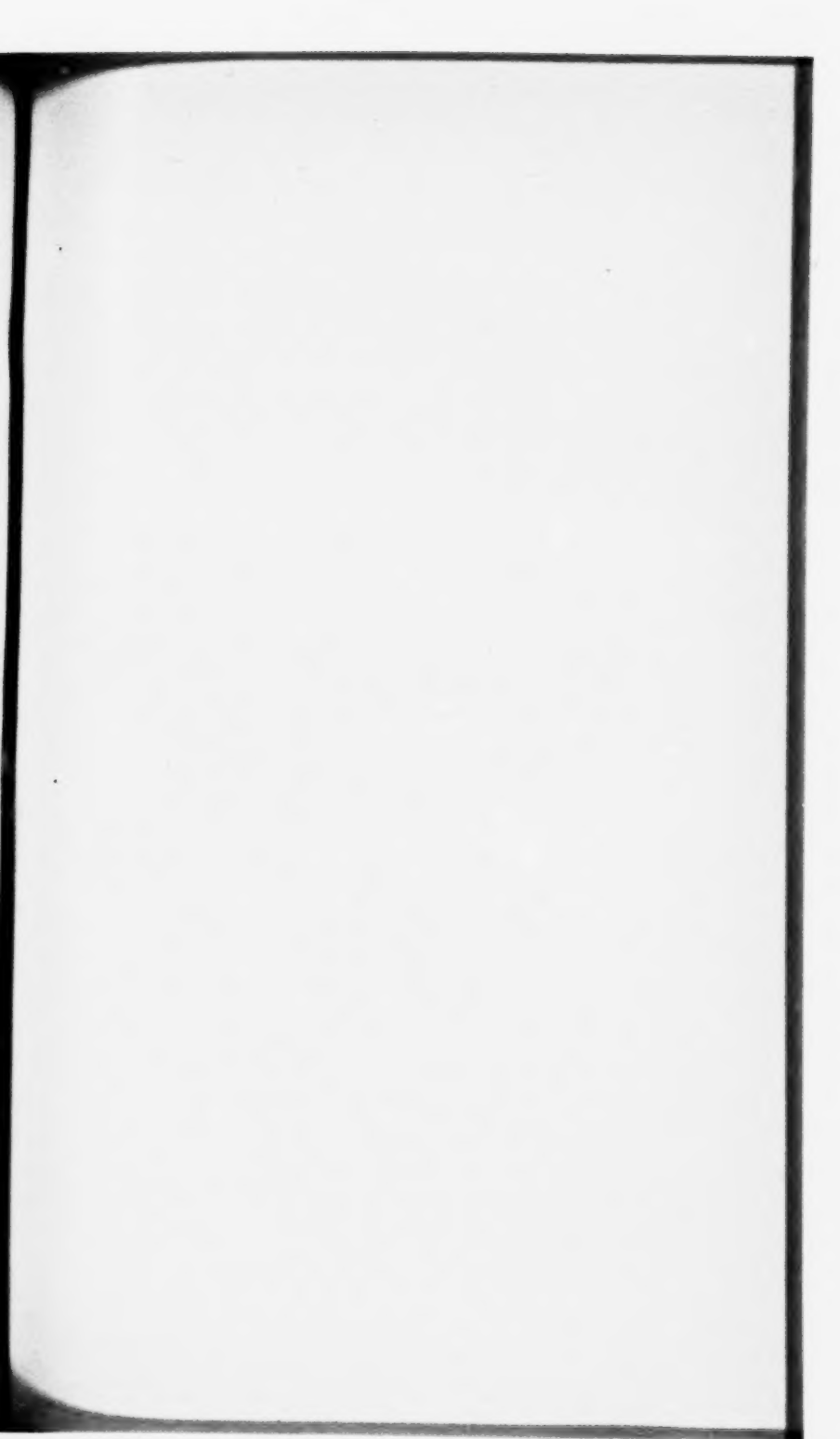
(c) It always published in each of the books a memoir of Webster, which said :

"It is natural for those who make frequent use of a work like this to desire a knowledge of the *author's* life" (itals. ours) ;

(d) It always printed after the memoirs of Noah Webster his own preface to the 1828 edition, under the title "*Author's* Preface." The prefaces which followed by Goodrich and Porter were entitled "*Editor's* Preface." (Itals. ours.)

(e) It always, from 1847 to date published, and now publishes the name "G. & C. Merriam Company" as publisher, conspicuously on its title pages, and on the backs of its books, in the usual place where a publisher's name appears.

Its advertisements and price lists always gave prom-





THIS IS YOUR GUIDE

The trade-mark is a sign of quality—a guarantee of merit. It shows that the manufacturer has confidence in his product. It puts his reputation at stake and is a mark of good faith. It usually divides the genuine, superior goods from the poor ones.

A circle is the trade-mark of the G. & C. Merriam Company. It is a guarantee of the highest merit in dictionaries. It means that a concern which has manufactured dictionaries for 67 years past puts its reputation behind any book which bears that trade-mark. There are many so-called Webster's Dictionaries, but the kind that is used in 99 per cent of the leading schools, colleges and universities of the country, the kind that is indorsed by the United States Supreme Court—the kind The Republic is offering—is the genuine Webster's Dictionaries, made by the old reliable Merriam Company, successors of the Master Mind in Dictionary building, Noah Webster, is the kind that bears the circle trade-mark on the front cover.

Why take any imitation when you can get the genuine for less?

(Exact Size.)

inence to the name "Merriam's" as *publisher*, side by side with "Webster" as *author* (fol. 2633).

On its books, letter heads, price lists and advertisements it features as its trade-mark the arbitrary symbol consisting of a "Circle, Monogram and Wreath," which is shown in the fac-simile advertisement on the opposite page (fol. 6924).

The name "Merriam," and the "Circle, monogram, and wreath," signifying wholly origin and ownership, have been its only natural trade-name and trade-mark. This name and mark have been exclusively used by it and exclusively associated with its dictionaries. The trade attached to this name and to this mark is the only trade to which complainant is exclusively entitled.

When a manufacturer puts more than one word or mark on an article and one of these clearly and positively indicates the source of manufacture, the other is *presumed* to denote the kind, class or quality, that is, to be descriptive or generic, and this is so even when the descriptive mark is of such a character as otherwise to be appropriable as a trade-mark.

Columbia Mill Co. vs. Alcorn, 150 U. S., 460, 466, 467.

Mfg. Co. vs. Trainer, 101 U. S., 51-55, 56.

Lawrence Co. vs. Tennessee Co., 31 Fed., 776, 787.

Beadleston & Woerz Co. vs. Cooke Co., 74 Fed., 229, 231, 232.

Albany Wrapping Paper Co. vs. Hoberg Co., 102 Fed., 157, 158, 159; affirmed, 109 Fed., 509, 590.

Stevens Linen Works vs. Wm. & John Don Co., 127 Fed., 950, 951.

How much the more then, when the name and arbitrary symbol of a manufacturer are coupled with a name which intrinsically cannot be appropriated as a trade mark (the name of a literary product which by expiration of copyright is in the public domain), must the presumption attach that the sole index of origin is the name or the arbitrary symbol of the maker, and that the other name is exclusively descriptive or generic.

We have a notion that our foregoing contention would be speedily adopted by the appellant if some one named Merriam should organize "The Merriam Co." to carry on the dictionary business, and should begin vending a dictionary entitled, let us say, "The People's Dictionary, published by the Merriam Company." We can imagine the array of witnesses which appellant would produce, who would swear that "Merriam" was the one identifying trade name which was associated with its trade and was familiar to every citizen of the United States who had ever used one of its books.

We can imagine how it would laugh to scorn the very claim which it makes here, that ninety per cent. of the dictionary buyers recognize "Webster's", only, as *the* one identifying symbol of dictionaries published by the appellant, and that as appellee's dictionary did not have "Webster's" in the title, it was not calculated to deceive, since practically no one knew the Merriams by their own name, but only by the name "Webster's."

(f) It always used distinctive sub-titles to indicate the work of the editors, as distinguished from the work of Webster as author of its books. Thus, when, in

1864, it published for the first time a dictionary which contained in addition to Webster's definitions of standard words, matter not written by Webster, it ceased to entitle the book merely "Webster's Dictionary" and added the new title "Unabridged" to identify the new matter; in 1890 it added the new title "International" to identify the new matter of the new edition of that year, and in 1909 it added a new title "New International" to identify the new matter in that edition. Its editions of 1864, 1890 and 1909, as it admits in one of its prefaces, were in fact "popularly known" respectively as "the Unabridged," "the International" and "the New International." In the preface of its 1909 edition occurs the following:

"A general revision *which became popularly known as the 'Unabridged'* was published in 1864." (Italics ours.)

And further:

"In 1890 appeared another complete and more radical revision of the entire volume. Its new title, 'Webster's International Dictionary,' marked the fact that the work of Webster and his successor * * * had been enriched by the scholarship of various people."

Speaking of the title, "An American Dictionary of the English language," the appellant in its 1890 edition states:

"While always hitherto retained on the title-page the adjective long ago passed out of pop-

ular use as a description of the book, which has for many years been known as the 'Unabridged.' * * *

Appellant then continues :

" Why now International ?

" Now, upon the issue of an edition so materially altered and improved as the present one is, the occasion seemed appropriate for the modification of the title."

All revised or abridged Webster dictionaries published since 1864 have borne distinctive titles to identify the matter contained in them of which Webster was not author. For instance, the abridged dictionaries in which complainant now deals are entitled " Webster's Collegiate," " Webster's Little Gem," " Webster's Condensed," etc.

Its competitors have followed the same method of identifying what was different in their various books, the name Webster's identifying the part which was common to them all.

As the appellant in conjunction with its use of " Webster's " in its titles has never ceased to proclaim Webster as the *author* of part of the book, how can it be heard to pretend that the public has not understood the name as it used it and has insisted on distorting the plain meaning of a plain term use by appellant in its plain sense, into a signification wholly different, viz., as the fanciful trade-name of a publishing house ? We submit that the *manner* of complainant's use in its books of the name of Webster's as *author* thereof, renders absolutely impregnable the presumption that it has retained that natural signification.

THE MERRIAM COMPANY'S USE OF WEBSTER IN THE TITLE OF A DICTIONARY HAS NEVER BEEN EXCLUSIVE.

Appellant began to publish dictionaries in 1847.

Publishers from 1847 to 1889.

During this period FOURTEEN concerns published Webster's dictionaries: ¹

As to the extent of appellant's business during the years 1847 till 1864, the record is completely silent. Presumably, therefore, each of its competitors sold, contemporaneously, as many dictionaries as it did, making their aggregate business much greater than appellant's.

As to its business from 1864 until 1889, the record

¹ (1) 1831-1853, or later, Harper & Brothers.

(2) 1839-1853, or later, White & Sheffield.

(3) 1840-1853, or later, J. S. & C. Adams.

(4) 1837-1854, Huntington & Company.

(5) 1837-1854, F. J. Huntington.

(6) 1837-1854, Huntington & Savage.

(The last three publishers published four different Webster's.)

(7) 1856, 1857, and later, Mason Brothers.

(This firm published six different Webster's.)

(8) 1856-1876, and later, J. P. Lippincott & Company.

(This firm published five different Webster's.)

(9) 1867-1892, Ivison, Blakeman & Taylor.

(The Webster's Dictionaries published by this firm and by American Book Company—7 in number—were those sold in the schools.)

(10) 1857-1892, American Book Company.

(11) 1872, and later, J. Duffey's Sons & Company.

(12) 1879-1912, Hurst & Company.

(13) 1880-1889, World Publishing Company.

(14) 1885-1890, Ward, Locke & Company.

throws light, by inference, but fails to show that appellant's business during that period was greater than that of its competitors.

Not only were all of the "Webster's" dictionaries sold by appellant's competitors between 1847 and 1889 in circulation during that period, but most of the "Webster's" dictionaries previously sold by other publishers (between 1806 and 1847) were in circulation, some for one part and some for another part of the period from 1847 to 1889. This resulted from the well-known fact that a dictionary remains on the shelves of its buyer or of his family and is there consulted for thirty or forty years. Prof. Peck testified that when he was a young man (about 1882-1885) he knew a number of households which possessed and used the 1828 edition of Webster's dictionary. Therefore, not only the "Webster's" published by appellant's competitors between 1847 and 1889 operated to prevent an exclusive association of that name with its publishing house, but all of the various "Webster's" published during the 41 years before 1847 and remaining on the shelves of their owners operated to prevent such exclusive association.

1889 to Date.

In 1890 M. A. Donahue & Co., George W. Ogilvie, Henry G. Allen, Brock & Rankin, W. B. Conkie Co., George M. Hill and the Werner Company published unabridged reprints of the 1847 edition.

In the 48 years from 1864 to 1912 appellant sold 1,200,000 big dictionaries. Within a few years after

1890 the above competitors had sold more than that number of big dictionaries alone. Donohue & Company alone sold over 1,000,000 copies. (Record, fol. 4188.)

From 1904 to 1912 George W. Ogilvie and his successor, Saalfeld Publishing Company, extensively published an unabridged revision of the 1847 edition.

Therefore NINE publishers have published *unabridged* "Webster's" in the last twenty-two years.

From 1890 to 1912 FORTY-FOUR publishers published *abridged* editions of Webster's dictionaries (see Appendix, pp. 162-167):

- | | |
|--------------------------------|-------------------------------|
| 1. Alden & Co. | 23. Allison & Webster. |
| 2. Barse & Hopkins. | 24. W. B. Bechtold. |
| 3. Wm. Bulger. | 25. A. L. Burt. |
| 4. Commonwealth Publishing Co. | 26. Cupples & Leon Co. |
| 5. W. B. Conkey & Co. | 27. Donohue, Henneberry & Co. |
| 6. M. A. Donohue & Co. | 28. Frank Bros. |
| 7. Excelsior Publishing Co. | 29. Hampden Publishing Co. |
| 8. Funk & Co., of Michigan. | 30. John Hovendon. |
| 9. Geo. M. Hill & Co. | 31. Laird & Lee. |
| 10. Hurst & Co. | 32. Loomis Bros. |
| 11. Lamont, O'Donnell & Co. | 33. Madison Book Co. |
| 12. David McKay. | 34. E. E. Miles. |
| 13. Marsh & Company. | 35. Mutual Publishing Co. |
| 14. Monarch Book Co. | 36. F. Tennyson Neely. |
| 15. National Publishing Co. | 37. Geo. W. Ogilvie. |
| 16. Geo. W. Noble. | 38. R. S. Peale & Co. |
| 17. I. & M. Ottenheimer. | 39. Popular Publishing Co. |
| 18. People's Publishing Co. | 40. Syndicate Publishing Co. |
| 19. Reilly & Britton. | 41. Thompson & Thomas. |
| 20. Success Publishing Co. | 42. W. R. Van Sant. |
| 21. C. C. Thomas & Co. | 43. Wehman Bros. |
| 22. M. W. Walters. | 44. John C. Winston Co. |

During this period, the aggregate sales of abridged Webster's dictionaries by competitors the Merriams' vastly exceeded its own sales (*ib.*, 158-161). Laird & Lee alone have published twelve different abridged editions of Webster's dictionaries, some of which have been

adopted in the public schools of Indiana, Illinois, Ohio, Michigan, Maryland, Kansas, Nebraska, Missouri, Oklahoma and Utah. As Laird & Lee are being sued for an accounting by the complainant, obviously it was impossible to secure exact proof of their sales, though there is evidence that they sold over 1,000,000 copies of its "Vest Pocket" edition alone. Defendant's sales in one year only exceeded 500,000 or 600,000 books.

AMOUNT OF ADVERTISING OF PARTIES HERETO.

For details and folio references see Appendix, pp. 167-170.

In the 48 years from 1864 to 1912, appellant spent \$1,900,000 on advertising. It has issued 86,000,000 circulars. The advertisements of appellee's dictionary alone have occupied space in newspapers which, at the current rates, would cost \$2,500,000, and counting each newspaper as a circular, appellee has issued over 600,000,000 circulars. Ogilvie and Saalfield has spent over \$125,000 in advertising; Laird & Lee claim to have spent more than the appellant; one mail order house which advertises Webster's dictionaries of various competitors of the appellant issues 7,000,000 catalogues annually (fol. 7154).

From the foregoing it is clear that appellant has never been the exclusive user of the name "Webster's" in the title of dictionaries, and that the association of that title has been more extensive with the publications of its competitors, both as regards the number of their books sold and the extent of their advertising, than with the Merriams

5.

SYNOPSIS OF OPINION TESTIMONY AS TO MEANING
OF NAME "WEBSTER."

We do not believe that the court will pay much attention to the opinions of the librarians and publishers who undertake to tell what understanding of the name "Webster's Dictionary" resides in the mind of the average purchaser, especially when we find that only two of the twenty-two purchasers of our book, chosen by the complainant from among 500,000 or 600,000 as most favorable to its contention, exhibit any understanding of the term which even approximately corresponds with these person's opinions on that subject.

This is the testimony to which Judge Hand said below he paid not the slightest attention.

An extended review of this opinion testimony will be found in the appellee's appendix, (pp. 174-6).

The appellant offered the testimony of seven retail booksellers, dealers in Webster's Dictionaries published by various publishers, who testify that the title does not signify any particular publisher to the ordinary purchaser. The testimony of these witnesses, with folio references, will be found at page of the above appendix.

6.

SYNOPSIS OF LETTERS FROM PERSONS ALLEGED TO
HAVE BEEN MISLED BY ADVERTISEMENTS.

Certain letters of persons claimed to have been misled by advertisements are to be found at pages 136-158 and 224-233 of the Record.

Of 52 writers *three, only*, refer to advertisements of appellee's book, namely, Carter (fol. 568), Atkinson (fol. 577), and Sipe (fol. 585). As the dates of Carter's and Atkinson's letters are December, 1911, and Sipe's letter is dated November, 1911, the advertisements they refer to contained the cautionary notice and defendant's name; therefore, as the writer's knew the Merriam's by name, they evidently read the advertisement carelessly. Sipe's statement "it is one of yours, of course" (fol. 585), shows that he knew that there were other "Webster's" besides the complainant's.

All of the other 48 letters refer to other publishers' advertisements, which are not before the Court. These letters are, therefore, wholly irrelevant; for, *non constat*, these advertisements contained all sorts of deceptive devices, wholly apart from the use of the name "Webster's."

The very fact that the circulation of 600,000,000 full pages of newspapers advertising appellee's book in the manner herein complained of resulted in the receipt by complainant of *three letters only* of persons who connected appellant with the advertisements, shows affirmatively that the title "Webster's," was not connected in the public mind with the appellant.

7.

SYNOPSIS OF TESTIMONY OF "ORDINARY PURCHASERS."

Appellant's Twenty-four Witnesses.

It should be borne in mind that appellant has been litigating the "Webster's" question for over twenty

years, and that its agents and salesmen all over the country have been engaged in collecting evidence to support its claims, under the guidance of zealous counsel.

Therefore, the alleged "deceived purchasers," whose testimony is produced in this case, must be nearly all who exist, and their testimony must be the strongest which it was possible for appellant to produce in support of its claims.

During that period millions of dictionaries entitled "Webster's" have been sold by appellant's competitors. This appellee alone sold 500,000 or 600,000 dictionaries before this suit began.

Out of the millions of purchasers of Webster's dictionaries published by its competitors, appellant produced twenty-four witnesses, alleged deceived purchasers, twenty-two being purchasers of appellee's dictionary, one (fol. 729) of the Saalfeld book and one (fol. 1551) of some other publisher's book.

To get these 24 witnesses it went to five cities. Seven of the 24 were from Springfield, appellant's home; nine from Brooklyn; three from Buffalo; four from New York; and one from St. Louis—scarcely a representative group geographically, when the burden of proof is on the appellant to negative the strong presumption that "Webster's" means to the average purchasers throughout the United States what it originally and naturally implied.

Two, Neuchterlein (fols. 1776-1798) and Haggarty (fol. 1766), testified specifically that they were not deceived.

Nine of the twenty-four, namely, Boynton (fol. 729), Cowles (fol. 405), Clark (fol. 750), Crossman (fol. 820), Hrggarty (fol. 1766), Kronvall (fol. 840), Pulsifer (fol. 832), Rogers (fol. 782), and Seybel (fol. 997), knew the Merriams by name as publishers. Had they examined the book they would, of course, have seen that the Merriams were not the publishers of it, but none of them did so.

Two, only, out of the entire 24, namely, Cowles and Clark, testified that "Webster's" in the title of a dictionary meant to them not Webster's work, but dictionaries published by the Merriams only. Judge HAND stated in his opinion that he paid not the slightest attention to the testimony of these two witnesses (Rec., fol. 8238).

With the exception of the above two none negated the presumption that "Webster's" as the title of a dictionary meant to him what it naturally signifies, namely, a dictionary the distinguishing contents of which are *by* Webster. On the contrary, eleven who were asked the question directly testified that Webster's in the title of a dictionary meant to them Webster's work revised and brought up to date, unrelated to any particular publisher. The testimony of these witnesses, chosen by complainant from among 500,000 or 600,000 as the best exponent of its theory, are so significant that we venture to quote their own words.

(1) *Gash* :

"Q. You bought a Webster's Dictionary because you thought that the rules of spelling

laid down by Noah Webster and the definitions given in his original dictionary were correct, is that true?

"A. Yes.

"Q. And you didn't care who the publisher was as long as it met those qualifications?

"A. As long as it met those other qualifications" (fols. 1102, 1103).

(2) *Catherine* :

"BY MR. HALE :

"Q. When you bought this book did you expect to get a dictionary written by Noah Webster himself? A. Yes, sir.

"Q. How then did you expect to receive an up-to-date dictionary? A. My answer is that I expected to receive Webster's up-to-date dictionary.

"Q. Did you buy upon the reputation of the present standard Webster's dictionaries or upon the reputation of a book more than 40 years old? A. I make the same answer" (fols. 1398, 1399).

(3) *Edith Fisher* :

"Q. Then, don't you mean by the term 'Webster's' Dictionary, which you expect to buy to-day a dictionary based upon the original dictionary written by Noah Webster? A. In a sense it would have to be more than 'based' on it" (fols. 1754, 1755).

She explains that she means by this it must contain more of Webster's work than the word "based" implies (fol. 1757).

(4) *Ida Smack* :

" Q. Does the name ' Webster ' in the title suggest to you the author or the publisher ? A. Why, the author.

" Q. Did you think about the publisher at all when you purchased the book ? A. No, I did not " (fols. 1442, 1444).

And further :

" Q. As between two dictionaries one of which contains little of that man Webster's work and another which contains a great deal of that man Webster's work, which would you consider more closely met your requirements for a real Webster's Dictionary ? A. I would consider that the one that contained a great deal of that man's Webster's work to suit my requirements, as I have occasion to look at the book quite often (fol. 1442).

(5) *Miss Halla Wells* :

" Q. Does not ' Webster's Dictionary ' really mean to you a book originally compiled by Noah Webster and brought up to date ? A. Yes " (fol. 1670).

" Q. Is it connected in your mind with any particular publisher ? A. No.

" Q. You buy the book, then, on the reputation of the original compiler Noah Webster ? A. Yes " (fol. 1671).

(6) *Burlingham* :

" Q. Do you understand anything more by the term ' Webster's Dictionary ' than a dictionary based upon the unabridged dictionary

of the English language of Noah Webster, L.L.D., revised and brought up to date in accordance with the most recent eminent English and American authorities? A. No" (fols. 1269, 1270).

(7) *Lutz* :

" A. I believe that a ' Webster ' dictionary must be connected and based upon Webster's original definitions.

" Q. If you were offered, then, a dictionary containing the same literary matter with its spelling and definitions based upon the original dictionary edited and compiled by Noah Webster, would it matter to you who published it.

" A. If this book was a reliable edition of the Webster Dictionary, which I know to be the best authority, regardless of who published it, it would not matter to me.

" BY MR. HALE:

" Q. You spoke of Webster's original definitions. By that do you mean the definitions contained in the standard current Webster dictionaries now in general use or the definitions contained in some dictionary published more than fifty years ago?

" A. I believe I mean by that I mean the definitions on which all of the genuine Webster books are based" (fols. 1201, 1202, 1203).

(8) *Hughes* :

Speaking of appellee's book, said (fol. 1288):

" Q. Of what book did you suppose it was an abridgement?

" A. Of the original Webster's Dictionary."

And, at fols. 1199, 1200, 1201 and 1202 :

" Q. Does the expression, ' Webster's Dictionary ' mean to your mind a dictionary containing the Websterian spelling and Websterian definitions by whatever publisher published ?

" A. I believe that any book called a Webster Dictionary must be connected and based upon Webster's original definitions.

" Q. If you were offered then a dictionary containing the same literary matter with its spelling and definitions based upon the original unabridged dictionary edited and compiled by Noah Webster, would it matter to you who published it? A. If this book was a reliable edition of the Webster Dictionary, which I know to be the best authority, regardless of who published it, it would not matter to me."

(9) *Newberry* :

Referring to the express " Webster's Dictionary," says :

" It is connected in my mind with the original Webster and the one we learned to respect in school."

(10) *Gelhart* :

" Q. Does the name ' Webster's ' in a dictionary indicate anything more to you than the contents of that dictionary were originally prepared by some author known as Webster, and are to be considered reliable contents ?

" A. I anticipated that I was buying a dictionary by Noah Webster.

"Q. Have you any reason to believe that you did not get a dictionary by Noah Webster?

"A. I cannot say that I have" (fols. 1408, 1409).

All of the foregoing witnesses negated the suggestion that "Webster's" might imply a publisher. Gash (fols. 1102, 1103), Catherine (fol. 1396), Fisher (fol. 1751), Hughes (fol. 1300), Smack (fol. 1444), Wells (fol. 1671), Burlingham (fols. 1269, 1270).

Absolutely none of the testimony of any of the twenty purchasers of defendant's book amounted to more than this :

They supposed that defendant's dictionary was published by the same concern that published the "Webster's dictionaries they had known, *because they didn't know that other concerns published Noah Webster's work.* Crossman (fols. 813, 814), Fisher (fol. 1738), Hughes (1289), Kronwall (fol. 840), Lutz (fols. 1188, 1189), McMahon (fol. 1223), Pulsifer (fol. 832), Smack (fol. 1420), Wells (fol. 1667), Burlingham (fol. 1254).

This constitutes no evidence of a secondary meaning.

As was said in *Schove vs. Schmincke*, *supra*, p. 91 :

Evidence was given that those words were understood in the trade to refer to plaintiff's goods, and there was also evidence to the contrary. "But several of the plaintiff's witnesses are silent on this subject, and others who have made affidavits do not say more than that they term 'Castle Album' denotes the plaintiff's albums and no others. This may mean that the term denotes the plaintiff's goods to the witnesses

themselves, which is very probable, and may be accepted as true; seeing that they are customers of the plaintiff and have received from him all the 'Castle Albums' they have bought. Thus, in their minds the term would naturally be associated with the plaintiff and goods of his manufacture or selection. But statements to this effect fall far short of the proposition which the plaintiff seeks to establish, viz., that the term is now accepted in the market generally as designating *exclusively* his goods."

(A digest of the testimony of the above twenty-four witnesses will be found at pages 178-187 of the Appendix.)

APPELLEE'S ORDINARY PURCHASERS.

For the appellee to have testimony of a large number of witnesses in the usual way, as to the meaning of the name Webster, would have entailed a very great expense. Therefore appellee caused an absolutely fair canvass to be made of about 1228 persons, chosen at random, in the following cities of the United States: New York, Brooklyn, Boston, Philadelphia, Pittsburgh, Cincinnati, Louisville, Milwaukee, Trenton, Bridgeport, Morristown, Danbury, Jersey City, Meriden, Newark, New Britain, New Brunswick, Waterbury and New London.

In most instances the canvass was made among purchasers of appellee's dictionaries. In order to make it absolutely fair, the persons interrogated were not in-

formed in advance of the purpose of the questions, except that statistics were being taken, and their answers, exactly as given, were taken down by the canvassers.

The following were the questions propounded, and, roughly stated, the answers thereto, stated in percentages :

Question No. 1. Do you know who is the publisher or who are the publishers of Webster's Dictionaries ?

About 94% answered "No."

The balance of 6% named the Merriams, Funk & Wagnalls, Appletons, Lippincotts, Colliers, Syndicate Publishing Company, American Book Company, American News Company, Trow City Directoy, those naming the Merriams being fewer than the aggregate of the others named, and only slightly exceeding those naming Funk & Wagnalls.

Question No. 2. When you hear or see the name "Webster" on a dictionary, does it indicate to you a dictionary gotten out by any particular publisher or at any particular place ?

About 93% answered "No."

About 6% or 7% voluntarily added that anyone could publish the book, or that there were a number of publishers, or words to that effect.

Most of the remaining 7% answered yes, without specifying. A few answered the "Merriams" and "Funk & Wagnalls," "Webster."

Samples of answers were: "Couldn't say. Anyone can make the book." "Springfield," "Boston," "Chicago," "National Press Association," "Despatch" (Pittsburgh newspaper).

Question No. 3. Do you know any city or cities where any Webster's Dictionaries are published?

About 90% answered "No," and the remaining 10% answered "Springfield," "New York," "Chicago," "Hartford," "Philadelphia" and other places.

Question No. 4. Do you know any series of succeeding rewritings of Webster's Dictionaries gotten out by any one publisher?

About 98% answered "No."

Question No. 5. Who do you think wrote the definitions and fixed the spelling of the words to be found in the Webster's Dictionaries you have known of?

A large number of witnesses (about one-third) replied "Don't know," declining to commit themselves, obviously because the question implied a doubt as to whether Webster wrote Webster's dictionary, and they feared they might display ignorance if they gave the obvious answer. Of those who ventured an affirmative reply about 83% answered "Webster" or "Noah Webster."

Samples of the answers of the others are: "As indicated in the books themselves," "Webster with subsequent revisions," "Group or combination of authorities," "Board of college professors," "Contemporaneous authorities," etc.

Question No. 6. When do you think these definitions were written and that spelling fixed?

About 87% of those who ventured an affirmative reply to this question showed by their answers that they regarded Webster's dictionary as an old book.

Upon the foregoing testimony this court is asked to find that the name of the greatest dictionary writer known has now lost all reference to him among dictionary buyers, and is now the *nom de plume* of a publishing house up in Springfield, Mass.

POINT FOUR.

Appellant has not brought its case within the facts of any case in which a secondary meaning was adjudicated.

As illustrating how completely the appellant has failed to bring his case within the facts of any case in which a secondary meaning has been adjudicated, we call attention to the facts of the cases of which Mr. Hale said the following, at page 71 of his brief in support of his motion for a preliminary injunction :

“ The Chatterbox cases decided by this court are directly in point. * * *

“ These cases cannot be distinguished from the case at bar.

“ It would be difficult to find authorities more directly in point.”

We therefore ask the Court's special attention to these cases ; for, if they do not support complainant's contentions, no case does.

The "Chatterbox" cases are :

Estes vs. Leslie, 57 Fed., 22.

Estes vs. Worthington, 31 Fed., 154.

Estes vs. Williams, 21 Fed., 189.

The facts in these cases were as follows :

"Chatterbox" was adopted by complainant's assignor in 1866 as the title of an annual periodical publication embodying juvenile stories by different authors, and attractive pictures. It was an arbitrary fanciful and non-descriptive title identifying solely the qualities personal to the publishers, such as printing, binding, style, etc. Estes' assignor was the original adoptor of the title, except for two negligible spasmodic uses of the name Chatterbox.

Complainant's periodical had a distinct "appearance, style and manner of cover and of printing," which was peculiarly attractive, and universally identified it.

From 1866, when complainant first published its periodical under the title "Chatterbox" until 1876, no one else published any periodical under that title, and from 1876 to 1886, the few who undertook to do so were sued and enjoined. The circulation of complainant's periodical was extensive and it was universally understood that each new number contained stories and pictures wholly different from those published in any previous number, so that there was no question whatever but that the name "Chatterbox" was always wholly disassociated from authorship and wholly associated with the complainant as a selector of stories and pictures, as a printer, binder and dealer.

The literary matter and pictures in complainant's books were not copyrighted, under that name, so no question arose as to "Chatterbox" being the title of matter which might be called by that name at the expiration of a copyright monopoly.

In 1886 the last defendant who was sued began the publication of a similar periodical under the name "Chatterbox" and COPIED "THE GENERAL EXTERNAL APPEARANCE, MANNER OF COVER AND OF DECORATIONS OF THE PLAINTIFF'S BOOKS."

It appears, therefore, that the facts found in the Chatterbox cases and accentuated by the Court as the grounds of its decision not only do not appear in the present case, but the contrary facts clearly appear. Because the Court rested its decision on facts which are negatived in the present case, the necessary implication is that, on the facts of the present case, the Courts which decided the "Chatterbox" cases would speedily dismiss the appellant's present suit.

Our experience in this case confirms the appellant's statement that he is unable to "find authorities more directly in point" than the "Chatterbox" cases.

POINT FIVE.

Proof of deceit of careless, lazy buyers of an article is not evidence of existence of secondary meaning or of fraud.

Any consideration of what evidence the plaintiff has submitted must be considered in connection with the above rule of law.

Buyers of books who are too careless to look at the title page when they buy are not entitled to the court's protection against mistake.

Let us suppose that purchasers exist who have an idea, which is not true, viz., that there is only one publisher of the work of the author they seek, whereas, in fact, there are 53. Would their ignorance warrant the court to present to one of 53 publishers of that author's work a secondary meaning in that author's name and to order the other 52 to hand over all their profits on this book to this one publisher?

The Court will take notice that buyers of dictionaries are reasonably intelligent people, and appellee is not bound to exercise as great care in selling dictionaries as it would be were it selling an article generally consumed by the illiterate portion of the community.

What then is the duty of the defendant in this regard and has it fulfilled this duty?

The appellant has no monopoly of the trade of the careless and indifferent.

In *McLean vs. Fleming*, 96 U. S., 245; 24 L. Ed.,

828, this Court, speaking by Mr. Justice CLIFFORD, said :

“ A court of equity will not interfere when ordinary attention by the purchaser of an article would enable him at once to discriminate one from the other.”

And in *Columbia Mill Co. vs. Alcorn*, 150 U. S., 460; 14 Sup. Ct., 151; 37 L. Ed., 1144, this Court, speaking by Mr. Justice JACKSON, said :

“ Even in case of a valid trade-mark the similarity of brand must be such as to mislead the ordinary observer.”

No one is to be excused for not knowing that Webster's work is in the public domain, and that anyone may publish it, or revisions, amplifications and abridgment of it.

The name “ Webster's Dictionary ” was the title of Noah Webster's first dictionary, the copyright of which expired in 1834, of his second dictionary, the copyright of which expired in 1870 and of his third dictionary, the copyright of which expired in 1889. The copyrights of over 25 other dictionaries, embodying Webster's work with various revisions and all having the name Webster's in the title, have expired. These include all dictionaries copyrighted by the complainant before 1871, that is, all of its real revisions, with the abridgements based thereon, except its revisions of 1890 and 1909.

Since 1834 every person has been charged with the

knowledge that anyone has a right to make and sell a *Webster's Dictionary* and to call it by that title.

This is clearly shown by the Court's rulings in regard to Castoria, which was once patented and on which the patents expired in 1885. It has uniformly been held that everyone thereafter was charged with notice that everyone has a right to make and sell Castoria under that name.

In *Centaur vs. Marshall*, 97 Fed. R., 785, the Court said :

"The name of the appellant's product is 'Castoria,' and the conceded law of this case, upon this preliminary hearing, is that every one has the right to make and sell Castoria under the very name which the appellant uses to describe and advertise its medicine. Every one is presumed to know the law, and, in this state of the case, if the appellees sell their Castoria to those who seek this medicine simply, but who are careless or indifferent whose manufacture they purchase, they may thereby prevent the appellant from making sales and gaining profits which it would otherwise have obtained, but they inflict no remedial injury upon it, and furnish no ground for relief, because they deceive no one, and they violate no duty which they owe to the appellant or to the public, but merely exercise a commercial right which they possess. Every purchaser is charged with knowledge of the fact that any one may make and sell Castoria, and if he seeks that made by one manufacturer rather than that prepared by another, it is his duty to examine the wrapper with such a degree of care

as would ordinarily ascertain who the manufacturer of the article which he purchases is. The law imposes no duty upon the appellees to see to it that the careless and indifferent know that the Castoria which they buy is made by the appellant and not by another. They discharge their full duty to the appellant if they so dress their product that one who seeks to ascertain whose manufacture it is can readily learn, by a reasonable examination of their wrappers, whether it is made by the appellant or by themselves (*Coats v. Thread Co.*, 149 U. S., 564, 567, 572; 13 Sup. Ct., 966; 37 L. Ed., 847)."

This case is singularly like the one at bar, for in both cases the only question involved was the right of defendant to use a certain name.

Applying these rulings of Judge BREWER to the case at bar, we find several very important propositions laid down.

(1) At the expiration of the copyright in 1834 every one was put on notice that the world was free to make and sell Webster's dictionaries. The term "Webster's" had "become known as the name of the thing and as such it could not be appropriated as a trade mark" (*Canal Co. vs. Clark*, 13 Wall., 311; *Chemical Co. vs. Meyer*, 139 U. S., 540, 11 Sup. Ct., 625). "As well might a manufacturer of flour claim a trade mark in the word 'flour' as a manufacturer of Castoria (Webster's dictionaries) as a trade mark in that name" (84 F., 958).

The name "Webster's" is the name by which the article was and is known. For evidence of this see the copyright notices filed by the complainant.

" Within, therefore, the decision in *Singer Mfg. Co. vs. June Mfg. Co.* the word "Castoria" (Webster's) being the generic name by which the article is known to the public it has become the property of the public and anyone is at liberty to use it as descriptive of the thing he is manufacturing and selling" (84 Fed., p. 955).

If any one to-day supposes that there is only one publisher of Webster's dictionaries, it is due to lamentable ignorance of two facts of common knowledge—one, that Webster wrote his book so long ago that by operation of law the right of every one to publish it and call it Webster's has long existed; the other, the fact that numerous other publishers have been publishing it extensively for the last 107 years, especially and most extensively during the lives of the present generation.

The foregoing ignorant and indifferent persons are the only ones whom the court is asked to protect and the only class of persons that is shown by the record to have been deceived.

Appellant's purpose in bringing this suit is to capitalize their ignorance into privilege founded on a Court's decree; then upon the basis of that decree mulct this defendant and other users of the title "Webster's" for thousands of dollars of damages.

The foregoing ignorance and indifference cannot confer any rights upon the appellant, nor impose any liability upon the appellee, for every one is charged with knowledge of the above existing facts.

See *Centaur Co. vs. Marshall*, 38 C. C. A., 413 (97 Fed., 785).

POINT SIX.

Unless the appellee's mere use of the name "Webster's" constitutes unfair competition, there are no facts proved from which deception by defendant could or did result, or from which a fraudulent intent could be inferred.

"The basis of a suit for unfair competition in trade is fraud. To warrant relief in such a suit there must be proof of the fraudulent intent to palm off the goods manufactured by others as those manufactured by the plaintiff or proof of facts and circumstances from which such an intent and fraud may be fairly inferred."

Gorham Mfg. Co. vs. Emery Bird-Thayer Dry Goods Co., 104 Fed., 243.

In the present case there is no direct proof of fraudulent intent on the part of the appellee and indeed the existence of such fraudulent intent is denied in appellee's answer and in express terms by appellee's witnesses (fols. 4316, 4396-7, 4452-3, 4469, 7474-6, 7486-9). Appellee relies upon various facts and circumstances which it sets forth and from which it says that such an intent and fraud may be fairly inferred. These facts and circumstances are:

(1) that appellee, after purchasing the copyright and plates of the Crown Dictionary based on Webster's, published a revised edition of that book under the title "Webster's New Standard Dictionary," (2) that appellee removed the name of Edward T. Roe from its title page, (3) that it omitted the 1904 copyright notice

from the back of the title page, and (4) that it advertised its book in a fraudulent and deceptive way.

Whether or not appellee was justified in publishing and selling a revised edition of the "Crown Dictionary," which was based on Webster's dictionary and whose essential content was Webster's own work, under the title "Webster's New Standard Dictionary" is discussed at length in another part of this brief (Appendix, at pages 196-212). Whether or not the use of the name "Webster" as part of the title of any dictionary not published by appellant is a circumstance from which fraud can be fairly inferred, or from which "remediable injury" can result, has been fully discussed.

Even though appellee's motive was to avail itself of whatever reputation attached to the name of Dr. Webster in connection with dictionaries, this motive was not illegitimate, inasmuch as, and as long as, appellee did not attempt or desire to palm off its dictionaries as those of appellant.

Howe vs. Wyckoff, 198 U. S., 118 at 139.

Dr. Reed's Cushion Shoe Co. vs. Frew, 152 Fed., 890.

It next appears affirmatively that appellee's sole purpose in omitting the name of Edward T. Roe from its title page and the 1904 copyright notice from the back of its title page was to differentiate its book from another book published from a duplicate set of plates by the Cupples & Leon Company (fols. 4322, 4418, 4462). This simple explanation of the omission conclusively rebuts any inference that the omission was

for the purpose of palming off defendant's dictionaries as those published by complainant.

Defendant's Advertisements.

At pages 93-100 of complainant's brief its accusations concerning Defendant's advertisements are summarized.

More than 600,000,000 advertisements of appellee's dictionary were inserted in various newspapers throughout the United States. Appellant has selected from this vast quantity a half dozen for the purpose of proving that appellee was trying to sell his book as and for appellant's book. As a matter of fact they were not defendant's advertisements at all but were the advertisements of the newspapers themselves, chiefly devoted to exploiting the generosity and great public spirit of the newspaper which was distributing a dictionary for the education of the community.

But even if defendant is held fully responsible for these advertisements there is nothing in them which justifies complainant's oft repeated accusations of fraud, unless it was fraud to use the name "Webster."

Turning now to the advertisements which are said to prove defendant's collateral fraud, we find that at page 94 of appellant's brief, it refers to three advertisements, which appeared respectively in the Pittsburgh Post of February 12th, 1911, the Los Angeles Times of December 3d, 1911, and the Mobile Item of December 19, 1911. It is alleged that in these advertisements certain language and a cut of Uncle Sam which had been used in the Boston American of Sep-

tember 12th, 1910, in connection with one of appellant's dictionaries, were copied by appellee. An inspection of the advertisement from the *Mobile Item* will show that the most conspicuous feature on the page is the phrase "A \$4 Dictionary for everybody that reads the Item." Similar language is the important feature of the *Los Angeles Times* advertisement, and, in addition, *this advertisement contains in bold type the statement that "the dictionary is not published by the original publishers of Webster's dictionary or by their successors."*

The feature of Uncle Sam and some of the laudatory reading matter were perhaps copied as good advertisements from some common source or from the *Boston American*, but it is an insult to the commercial intelligence of defendant's advertisers to suppose that the purpose of the foregoing advertisements was to deceive; for no person seeing the Los Angeles, Mobile or Pittsburgh advertisements could possibly be misled unless he had previously seen the advertisement which appeared in Boston *a year earlier*. Would any hard-headed man of business expect that Boston people who had seen the Boston advertisement would be in Los Angeles or in Mobile or in Pittsburgh a year later; would see the advertisement of of defendant's book; and, thereupon, buy one of defendant's books believing that he was purchasing one of complainant's books which he had seen advertised the year before in Boston?

If it be illegal to compliment a rival advertiser by copying some sentences of his descriptive advertising, appellant itself is not unsmirched, for in exploiting its "Webster's Condensed Dictionary" in St. Louis in Sep-

tember, 1911 (fols. 6876, 6887, 6905, 6935, 6941), it copied many of the advertisements which had appeared in connection with appellee's book in the *Pittsburgh Post* in February, 1911 (fol. 6865). Indeed, appellee employed for this purpose a man named Murphy, whose chief value consisted in the fact that he had learned all of the secrets of appellee's business when in appellee's employ at Pittsburgh.

On page 95 of appellant's brief is criticized a caution which it is alleged that several of defendant's advertisements contained. The caution "to observe the exact wording," namely "Webster's New Illustrated Dictionary with U. S. Census and Maps" was calculated to produce an effect directly opposite from confusion with the dictionaries of appellant or of any other publisher, and obviously served as an effective warning that there were other Webster dictionaries on the market and that the exact wording "New Illustrated with U. S. Census and Maps" was the identifying symbol of the books which the newspaper was presenting to the public. Moreover, two of these advertisements (see Ex. "Additional advertisements, pp. 4 and 6) included also the regular cautionary notice in the form specified by the Ogilvie decree.

If complainant has by its proof established that all of the laudatory words in the English language such as "authentic," "genuine," "authoritative," "up to date," etc., when used in connection with dictionaries have acquired a secondary meaning and indicate dictionaries published by complainant, there may be some basis for objection to the extracts from ad-

vertisements which appear on pages 96 to 100 of appellant's brief. If, on the other hand, appellant has failed to establish this proposition these advertisements have no vice unless there be vice in the use of the name "Webster's." In detail these advertisements are as follows :

That on page 96 is a reading notice which warns against imitators. As stated above, warning notices of this kind can under no circumstances produce confusion, and it is moreover clear from the testimony that these warning notices were not directed against complainant's publications but against the Webster dictionaries published by Cupples & Leon Company and other competitors (fols. 4462, 4418, 4322). An inspection of the display advertising which accompanied this reading notice, and which appears at page 66 of complainant's exhibit, will show that here again the conspicuous feature was an offer of a "\$4 Dictionary" as a present.

The same comment applies to the quotation from the Seattle Intelligencer on page 97. The display advertising which accompanied this reading notice had as its striking feature the words, "Help yourself to a \$4 Dictionary," and included the regular warning notice of the Ogilvie decree.

On pages 99 and 100 of appellant's brief are various disconnected quotations taken from advertisements used in connection with defendant's dictionary. Most of these quotations are from matter in very small type in inconspicuous parts of the advertisements. In some of these advertisements, also, the conspicuous feature is a

description of the book as "a \$4.00 Dictionary" (complainant's Ex. deft.'s Advs., pp. 70-71), or as the "Post Dictionary," etc. (complainant's Ex. deft.'s advs., pp. 44, 97, 103). At least one of them moreover contains the explanatory notice of the Ogilvie decree (complainant's Ex. deft.'s advs., p. 57). Several of the quotations are misleading because of the omission of explanatory matter (Ex. deft.'s advs., pp. 44, 71).

It further appears that several of the advertisements from which quotations are taken were entirely prepared by the newspapers and absolutely upon their own responsibility (see complainant's Ex. deft.'s advs., pp. 103, 112, also fols. 2504-7, 6876, 7054 and 7072).

At page 98 the language from defendant's wrapper again raises merely the question of the right to use the name "Webster." Unless "Webster" means "Merriam" this wrapper is unobjectionable. Furthermore this wrapper would naturally come into the possession of the purchaser only after the sale was completed and could not in any way influence the purchaser to buy appellee's dictionary believing that it was one of appellant's dictionaries.

This is the entire evidence upon which appellant attempts to base its charges of collateral misrepresentations, alleged to have resulted in the sale of appellee's books as and for those of appellant. It is submitted that there has been neither misrepresentation, nor any act calculated to produce confusion or "passing off".

POINT SEVEN.

No accounting should be ordered in the present case.

If no injunction be ordered the Court will of course refuse to direct an accounting. If an injunction in any form be decreed it would nevertheless be inequitable to order that appellee account and pay over its profits to appellant. Where, in a suit for unfair competition, an injunction gives the appellant all the relief to which he is entitled, no accounting for profits should be ordered.

“Courts will refrain from ordering an account of profits where an injunction will satisfy the substantial equities of the case.”

J. F. Rowley Co. vs. Rowley, 193 Fed., 390, at p. 393.

“A decree for profits and damages does not necessarily follow a decree for injunction.”

Rushmore vs. Badger Brass Mfg. Co., 198 Fed., 379, at p. 381.

The decision in *Merriam vs. Saalfeld*, 198 Fed., 369, holds no more than that a defendant must account for profits resulting from the violation of an injunction which by privity of contract is binding on said defendant.

The rule laid down in *Westinghouse Co. vs. Wagner Elec. Co.*, 225 U. S., 604, applies to accountings in patent cases. Such accountings necessarily rest upon the assumption that defendant has appropriated a property right of the complainant, and that he should pay

over to complainant whatever profits accrued to him by reason of his use of that property right. In a true sense no property rights are appropriated by unfair competition, and the extent of relief granted in such a case should depend entirely upon the general equities as disclosed by the evidence.

McLean vs. Fleming, 96 U. S., 245.

*Complainant Has Forfeited All Rights to an Accounting
by its Own Laches.*

In March, 1909, a few months after appellee began the sale of its dictionary, appellant wrote to appellee asking for a copy of its "Webster's New Standard Dictionary." Appellee immediately sent two copies of its dictionary to appellant with its compliments. A short but pleasant correspondence ensued. The last letter in this correspondence was one from appellant to appellee and ended with the words:

"We shall doubtless have occasion to write to you again about your book but we shall ask nothing but what is proper and reasonable under the Court decisions and you will of course expect to grant no less."

This letter was dated April 2d, 1909. During the remainder of the year 1909 and during the year 1910 and the greater part of 1911 no further communication of any kind was received from the complainant. It was not until October 4th, 1911, two and a half years after appellant's last letter, that appellant again wrote

to appellee about its book. At that time appellee immediately granted the most extreme concession ever ordered "under the court decisions." But appellant was not satisfied and brought this suit.

Inasmuch as every one of appellee's dictionaries and all of the advertisements of the newspapers since October 9, 1911, have contained the cautionary notice, "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors," the only period which could possibly be included in a decree for an accounting would be the period prior to October 9th, 1911, *i. e.*, prior to the date when these cautionary notices were inserted. By its own silence during this period complainant is barred from asking any accounting. Indeed appellant's apparent acquiescence after the correspondence of March, 1909,—appellant's silence after giving appellee reason to believe that it would write again if it had any actual or fancied complaint,—and appellant's present demand that appellee pay over its entire profits realized during that period of silence strongly raise the inference of designedly sharp practice.

It would be grossly inequitable to order this appellee to account for all of its profits amounting to from \$50,000 to \$100,000 inasmuch as the vast majority if not all of appellee's sales were made upon the merits of appellee's own books and as a result of appellee's business enterprise absolutely without any reference to appellant's publications.

See *Sebastian on Trade-Marks*, 5th edition, p. 249.

In appellant's brief below at page 89 it is stated that "almost certainly 99% of the purchasers of" appellee's "dictionaries have bought them under a misapprehension of what they were buying."

From the following facts it appears that this statement is absolutely unfounded, and that if there was any confusion at all between appellee's and appellant's books, this confusion was, broadly speaking, a negligible factor in the winning of profits.

(1) In August, 1911 (fol. 7376), the Springfield Union of Springfield, Mass., began a circulation campaign in connection with which it used the "Webster's New Standard Dictionary" of appellee. This campaign continued until November 11, 1911 (fol. 7428). During the course of the campaign more than 12,000 dictionaries were distributed by the Springfield Union (fol. 7498). It should be noted that this campaign was carried on at Springfield Mass., the home of the Merriams from the beginning of their business career.

There is probably no other City in the United States where the history of appellant's publications, of its claims and pretensions are so well known and where appellee's books would have been so quickly rejected if appellant's contentions as to the public's preference for its publications were correct.

On October 21st, 1911, however, in the midst of this campaign the Springfield Union published conspicuously in its dictionary advertisements the following notice :

" Any of our readers who gained the impression from the Union's announcements

that Webster's New Standard Dictionary, Illustrated, was published by G. & C. Merriam Co. and purchased it for that reason, may return the book and we will most gladly refund expense bonus amount. Furthermore, any person who obtained the dictionary at the Union office and feels they did not get full value may have money back by returning book in good condition " (fol. 7420).

Up to June 28, 1912, eight months later, not a single person of all the 12,000 who had purchased these dictionaries took advantage of this offer and returned the book (fol. 7423). Moreover, beginning on October 21st, 1911, when the above notice was published, and continuing until the end of the campaign on November 11th, 1911, the Springfield Union included in all of its advertisements the cautionary notice. During this period, of twenty-one days, approximately 2,650 dictionaries were sold (fol. 7427). It is, therefore, obvious that the public of Springfield, Mass., purchased appellee's books on their own merits without reference to the appellant.

As Mr. Nolan, the circulation manager of the Springfield Union, testified: "The persons who bought the dictionary seem to be perfectly satisfied, and it is now nearly one year since the first dictionary was sold" in Springfield, "and we think that in all that time, in this community, if the dictionary was not what it was represented to be, we would have heard of it long and loud, before this" (fol. 7558).

(2) As further indicating the indifference of the



general public to the claims of the G. & C. Merriam Co. we give the following facts concerning the campaign which was carried on in St. Louis, Missouri, during September, October and November, 1911. In this campaign the St. Louis Republic advertised the "Webster's Condensed Dictionary, Twentieth Century Edition" of the appellant and the St. Louis Post Dispatch advertised the "Webster's New Standard Dictionary" of appellee. By means of the usual full page advertisements each newspaper attempted to explain the merits of the book which it was distributing, and the St. Louis Republic took particular pains to lay before the good citizens of St. Louis numerous false and misleading statements concerning appellee's dictionary. An example of these advertisements by which complainant attempted to stamp out the competition of defendant is given on the opposite page. The attention of the court is especially directed to the following language in the sixth paragraph of the left-hand column of that advertisement :

"The Merriam Co. now have a suit pending in court by which they aim to restrain other publishers from using the name "Webster's," holding it as a part of their trade-mark."

Appellant probably misinformed the population of St. Louis by means of its full page *Republic* advertisements as completely as any community in the United States has been misinformed. In spite of that fact appellee sold 30,000 of its dictionaries in St. Louis (fol. 6945). In comparison with appellee's honest,

modern and up to date dictionary, with clear type and attractive illustrations, appellant's antiquated "Condensed Dictionary" (its so-called "Twentieth Century Edition") with tiny diamond-pica type, confusing method of grouping words according to their etymological roots, archaic illustrations and uninteresting vocabulary was a complete failure. The *Republic* terminated its campaign with appellant's dictionary several weeks before the first campaign with appellee's books ended (fol. 6952) and the demand for appellee's books was so great that after the first closing the *Post Dispatch* was compelled to have a second short campaign which continued until after Christmas (fol. 6954).

Thus, in spite of all denunciation, calumny and "revelation," which appeared in the advertisements of appellant's books, the dictionaries of appellee won on their own merits.

(3) At least once in each of appellee's campaigns at or before the filing of the bill of complaint herein appellee published the cautionary notice in the extraordinarily conspicuous form which appears in the advertisement on the opposite page, from the *Baltimore American*, of October 31st, 1911 (fols. 7005-8). On pages 1743 to 1751 of the record, the record of sales in all of the more important newspaper campaigns which were being carried on at that time is given. It appears conclusively from this record that the public bought appellee's books entirely upon their own merits and not at all relying upon the alleged merits of appellant's books, for the sales were not affected in any way by the



TELL YOUR FRIENDS

EVERYBODY MAY HAVE THIS

**LIMP
LEATHER** 1200 Pages

\$4.⁰⁰ Dictionary

BY CLIPPING

One Coupon

AS EXPLAINED BELOW

This Beautiful Book

Cheap at \$5.00

Come Early!

[illegible]

East Holliston,
1536 Orleans St.,
2600 R. Fayette St.
Southwest Holliston,
R. W. Carter Post Rd.
and Patterson Post
Ave.
2300 Hudson St.,
5425 Eastern Ave.,
Brookside and Bush Sts.

THE BALTIMORE AMERICAN

**Distribution
Positively** **ENDS NOV. 4th**

(Reduced from 14½ x 8½ to 9 x 5½ inches.)

insertion of these cautionary notices, even in the most conspicuous form.

The reading notices and enormous display advertisements which appeared in the leading newspapers of 400 cities created a demand in each one of those cities for appellee's *particular* books, brought into being a valuable good-will which had not previously existed, and produced large profits for appellee. This good-will attached to appellee's books alone—it was a new thing, separate and distinct from the good-will of appellant or any other publisher of dictionaries. Appellee is entitled to keep the profits which were made in this new market built up by its own enterprise.

Conclusion.

This Court should put an end for all time to appellant's persistent campaign of twenty years to monopolize the Webster dictionary business. That can be accomplished only by an emphatic declaration by this Court that "Webster's" has *no* "secondary meaning" indicating dictionaries published by appellant, and that appellant does *not* own exclusive or semi-exclusive rights in that name which entitle it to forbid or regulate its use by its numerous competitors engaged in publishing revisions, amplifications and abridgments of the work of Noah Webster.

So long as appellant is left with a colorable excuse for making those claims it will continue to frighten its competitors from the field by the oppressive methods

employed by it against this appellee, for, though this appellee, to save the expense of a lawsuit, conceded what appellant had no right to claim, namely, it inserted, on its title pages a cautionary notice which necessarily suggested a sort of admission of inferiority, and it inserted a similar notice in its advertisements at the added advertising expense of thousands of dollars, nevertheless, because it would not give up the name "Webster's," it has had to expend tens of thousands of dollars to defend this suit.

With publishers less able to bear the burden of that expense the cost of defending their rights would be prohibitory.

Therefore, full justice will never be done until this Court emphatically declares that "Webster's" is a public name in which this appellant has no rights superior to those of the public ; and that everyone may use that name in the titles of dictionaries based upon Webster's work with the same freedom with which appellant uses it, that is, without the restrictions of cautionary notices.

With such an opinion the decree appealed from should be affirmed.

Respectfully submitted,
HUGH A. BAYNE,
Counsel for Defendant-Appellee.

Office Supreme Court, U.

FILED

MAR 13 1915

JAMES D. MAHER
CLERK

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Supreme Court of the United States,

OCTOBER TERM, 1914—No. 217

G. & C. MERRIAM COMPANY,
Complainant-Appellant,
vs.

SYNDICATE PUBLISHING COMPANY,
Defendant-Appellee.

Brief on Behalf of Defendant-Appellee.

Vol. II.

Being an Appendix of Facts.

HUGH A. BAYNE,
Counsel for Defendant-Appellee.



APPENDIX.

Full Statement of the Facts.

The facts may be divided approximately into three periods, viz., the period before complainant entered the field, from 1806 till 1847; the period from its entry into the field in 1847 till 1889; and the period from 1889 to date. This division will incidentally serve to direct attention to two radical errors of fact, upon which complainant has heretofore relied, viz., (a) that it was the *original* publisher of Webster's dictionary; and (b) that it was the *exclusive* publisher thereof from 1847 till 1889.

1806-1847.

From 1806 until 1847 complainant published no Webster Dictionaries at all; but, on the other hand, dictionaries were published under that title, during that period, by numerous other publishers.

The publishers of Webster Dictionaries during the first forty-one years (1806 until 1847) of the publication of that author's dictionary were: (1) Hudson & Goodwin, of Hartford; (2) J. & D. West, of Boston; (3) S. Converse, of New York; (4) N. & J. White, of New York; (5) White, Gallagher & White; (6) F. J. Huntington, of New York; (7) Huntington & Co., of New York; (8) Huntington & Savage, of New York, and (9) J. S. & C. Adams, of Amherst, Mass.

Complainant was not a publisher of the dictionary during that period.

That the circulation of the Webster's dictionaries of the foregoing publishers was extensive, before 1847, appears, from complainant's statement, in the preface of its 1847 edition, that Noah Webster's books had, prior to that time, been "read by millions."

I.

1806 to 1840.

Publishers: HUDSON & GOODWIN, Hartford.

INCREASE COOKE & Co., New Haven (1806).

Title: *Webster's Dictionary*.

Copyright: 1806 (See title page in record, p. 671).

We infer that the above publishers continued to publish the above book until Noah Webster began the publication thereof in 1840 (See preface to Webster's International Dictionary).

II.

1807.

Publishers: J. & D. WEST, Boston.

Webster's Common School Dictionary (Record, p. 1787, fol. 7143).

III.

1828 to 1840 or later.

Publishers: S. CONVERSE, New York, 1828.

Title: *Webster's Dictionary*.

Copyright: 1828 (See title page in Record, p. 672).

This was an unabridged edition in two volumes quarto, and was the only large Webster Dictionary until 1840. (See preface to Webster's International Dictionary).

This book was the great work whose appearance complainant sets down as one of the great events in the history of the world (See Webster's International Dictionary, at page 2055 thereof).

IV.

1828 to 1856.

Publishers: N. & J. WHITE, New York, 1833.

Title: On back: *Webster's Dictionary*.

On title page: "Abridged * * * for the use of Primary Schools and the Counting House."

Copyright: 1828 (*Ib.*, p. 674).

This abridged dictionary passed through thirteen editions

(fol. 2694) and was sold or for sale, according to the title page in New York, Albany, Boston, Philadelphia, Baltimore, Hartford, Buffalo, Pittsburg, and Columbus, Ohio (fol. 2695) (*Ib.*, p. 674). We infer that the Whites published this book, and, the book referred to below in V., during the copyright period, because there is no evidence that anyone else ever published these books, or that their right to publish them was ever terminated.

The title page in evidence bears the imprint " 1838 " (fol. 2692).

V.

1829 to 1857.

Publisher : N. & J. WHITE, New York, 1838.

Title on Back : *Webster's Dictionary*.

On title page : " * * * Abridged from the Quarto edition of the Author * * * "

Copyright : 1829.

This abridged dictionary passed through fifteen editions (*Ib.*, p. 673).

VI.

1830 to 1831 and later.

Publishers : WHITE, GALLAGHER & WHITE.

Webster's Primary School and Counting House Dictionary (Record, fols. 7136, 7137).

VII.

1833 to 1854.

Publisher : F. J. HUNTINGTON, New York, 1839.

Title on back : *Webster's Dictionary*.

On title page : " A Dictionary for Primary Schools. "

Copyright : 1833.

In VIII. below reference is made to the evidence which shows that the publication of this dictionary was continued until 1854.

Ib., p. 675, and fols. 3240, 7130.

VIII.

1837-1854.

Publishers : HUNTINGTON & Co. ; F. J. HUNTINGTON ; HUNTINGTON & SAVAGE.

Titles : *Webster's Academic Dictionary* ; *Webster's High School Dictionary* ; *Webster's University Dictionary* ; *Webster's Pocket Dictionary*.

These dictionaries were published by F. J. Huntington or F. J. Huntington & Co. or Huntington & Savage, from 1837 (fols. 3203, 3215) until 1854 (3215), that is, 17 years, under contracts with Noah Webster and with the Webster heirs obligating the publishers to "keep the market well supplied with said works" (fol. 3193). They also appeared to have enjoyed, during this period of 17 years, a monopoly of the business of publishing abridged Webster Dictionaries of the same sizes as those they publish (fols. 3139, 3213).

Also see Record, pages 675, 797-799, 801-804, 805-807, especially folios 3186, 3189, 3193, 3203, 3207, 3208, 3221, 3222.

1839-1853 and later.

Publishers : WHITE & SHEFFIELD.

Title : *Webster's Primary Dictionary* (fol. 7132).

IX.

1840 to 1853.

Publishers : J. S. & C. ADAMS, Amherst, Mass., 1844.

Title on back : *Webster's Dictionary*.

On title page : " * * * First edition in Octavo, containing the whole edition of the Quarto, with corrections * * *."

Copyright 1840.

The title page refers to a prior Quarto edition (fols. 2701-2).

This book was in two volumes, was sold or on sale, according to the title page, in Amherst, Boston, New York, Philadelphia and Hartford (*Ib.*, p. 676).

Although the preface of the Webster's International Dictionary states that the copyright of the 1840 Webster was purchased by the Merriams in 1843, the imprint of this book,

"1844", shows that the prior rights of others to publish abridgments of the 1840 book were not affected by the contract of 1843, but continued after that date. As the right to publish abridgments was not conveyed by the Webster heirs till 1853 (Record, page 783 *et seq.*), we may properly infer that Adams continued to publish this abridgment until 1853.

1847-1889.

Webster Died in 1843.

In 1847 complainant first began to publish Webster's dictionaries. At that time Webster's fame as a lexicographer already had become national and international.

In the preface of its edition in 1847 (final par.), complainant said :

" * the name Noah Webster, from the wide circulation of some of his works, is known familiarly to a greater number of inhabitants of the United States than the name, probably, of any other individual except the *Father of His Country*."

Already, in 1847, Webster's fame attached especially to his clear definitions of the standard words of the language. Again we quote complainant's words from the preface of its 1847 edition :

"The chief value of a dictionary consists in its *definitions* :—in giving a clear, full and accurate exhibition of all the various shades of meaning which belong, by established usage, to the words of a language. It is in this respect, especially, that Dr. Webster's Dictionary has been generally considered superior to every other, both of this country and of England."

Complainant elsewhere speaks of "those definitions of standard words which are Dr. Webster's especial merit."

(Webster's International Dictionary Publisher's Statement.)

The greater was the fame of Webster and of his works the less likely was it that the name "Webster's" could depart completely from his personality and become associated in the public mind exclusively with one commercial house, as its commercial trade symbol.

Even had Webster or his heirs undertaken to do so, they could not have conferred upon the complainant any property right in the name "Webster's." As Judge WALLACE said in *Black vs. Erich*, 44 Fed., at page 794 :

"Neither the author nor proprietor of a literary work has any property in its name. It is a term of description which serves to identify the work * * *."

But no attempt was ever made to confer upon the complainant any exclusive rights in the name "Webster's" as the title of a dictionary. The copyright of the 1806 edition entitled "Webster's" had already expired in 1834 (fol. 7116), and the copyrights of every succeeding book entitled "Webster's," the publication whereof began before 1870, are in the public domain.

Complainant did not enter the business as the "successor" of the original purchasers of Webster's Dictionary, who were Hudson & Goodwin and Increase, Cooke & Co., as to the 1806 book, and S. Converse & Co., as to the 1828 book. It was merely one of many firms licensed to print and sell the copyrighted matter in the 1828 edition. The same license had already been conferred upon nine publishers and was then and thereafter continuously exercised by at least six of that number as well as by seven others who entered the field later.

Complainant shared the right to entitle its books "Webster's" in common with the following sixteen publishers who published Webster's work during the entire period from 1847 till 1889 (see *supra*).

- (1) 1828-1856, N. & J. White.
- (2) 1837-1854, Huntington & Company.
- (3) 1837-1854, F. J. Huntington.
- (4) 1837-1854, Huntington & Savage.
- (5) 1839-1853, or later, White & Sheffield.
- (6) 1840-1853, or later, J. S. & C. Adams.

- (7) 1841-1853, or later, Harper & Brothers.

(The last three publishers published four different Webster's dictionaries.)

- (8) 1856, 1857, and later, Mason Brothers.

(This firm published six different Webster's dictionaries.)

- (9) 1856-1876, and later, J. B. Lippincott & Company.

(This firm published five different Webster's dictionaries.)

- (10) 1857-1892, American Book Company.

- (11) 1867-1892, Ivison, Phinney, Blakeman & Co.

- (12) 1867-1892, Ivison, Blakeman & Taylor.

(The Webster's Dictionaries published by this firm and by American Book Company—7 in number—were those sold in the schools.)

- (13) 1872, and later, J. Duffy's Sons & Company.

- (14) 1879-1912, Hurst & Company.

- (15) 1880-1889, World Publishing Company.

- (16) 1885-1890, Ward, Locke & Company.

(This publisher's Webster's dictionaries were in various sizes from crown Octavo to pocket editions) (fols. 4773, 4794-4796).

The above statement is based mainly on evidence which has been in the possession of the complainant for years.

Yet despite this fact the Merriams have allowed Judge COLT to hold:

"It further appears from the evidence that from 1847 to 1889 the Merriams were the sole publishers of Webster's Dictionaries, and that in 1889, the name had acquired a secondary meaning, and indicated to the public the dictionaries published and sold by the Merriam Company" (Ogilvie vs. Merriam, 149 F., 856-60).

This mistaken finding of Judge COLT the Merriams now seek to turn into a *grant* to them of a property right worth a vast sum, and into a weapon with which they seek to penalize for their benefit this defendant and some 50 others who now publish this dictionary, by suits for damages for trespass upon property of theirs which it now seems they do not possess.

The testimony showing that the foregoing were the publishers selling this book between 1847 and 1889 is as follows:

I.

1841-1853 and later.

Publishers: HARPER & BROTHERS, New York.

Title: *Webster's Dictionary*.

A copy of this book bearing the imprint "1846" is in evidence and the preface shows that its publication began in 1841 (See also Record, page 1784, fol. 7134).

A new contract by Harper Bros. with the Webster Executors, regarding this book, was made in 1847, and is referred to in the Merriam contract of 1853 with the Webster executors as an existing right, under which Harper was then publishing the book (page 786, par. 6, fols. 3142, 3143).

The Merriam contract of 1853 recognized the Harpers' rights and promised not to trespass on them by publishing a Webster dictionary of the same size (fol. 3159). No other publisher except the Harpers' is shown to have ever published this edition; so that presumably they continued to publish during the copyrighted period, or until 1889. The Harper rights were never assigned. The Harper publication surely continued for at least six years and probably during the entire period that Judge COLT found that the Merriams were the "sole publishers" of Webster's Dictionaries.

II.

1839-1853 and later.

Publishers: WHITE & SHEFFIELD.

Titles: *Webster's Octavo Dictionary*.

Webster's Primary Dictionary.

In 1839 they were publishing a Webster's abridged from the quarto (Record, fol. 7132), which evidently is the above octavo which the testimony shows they were still publishing in 1847 and in 1853 (fol. 3142). In the contract of 1853 between the Merriams and Webster executors, the executors' prior contract with White & Sheffield was referred to as still in operation. The White & Sheffield rights were never assigned.

The White & Sheffield publication continued for at least seven years and probably during the entire period that Judge COLT found that the Merriams were the sole publishers of Webster's Dictionaries.

III.

1840-1853.

Publisher : J. S. & C. ADAMS, Amherst, Mass., 1844.

Title : *Webster's Dictionary*.

This book was in two volumes, was sold or on sale, according to the title page, in Amherst, Boston, New York, Philadelphia and Hartford (*Ib.*, p. 676).

Although the preface of the Webster International Dictionary states that the copyright of the 1840 Webster was published by the Merriams in 1843, the imprint of this book, "1844", shows that the prior rights of others to publish abridgments of the 1840 book were not affected by the contract of 1843, but continued after that date. As the right to publish abridgments was not conveyed by the Webster heirs till 1853 (Record, page 783 *et seq.*), we may properly infer that Adams continued to publish this abridgment until 1853.

The period of this publication continued for six years after complainant began to publish a Webster dictionary in 1847.

IV., V., & VI.

1837-1854.

Publishers : HUNTINGTON & Co., F. H. HUNTINGTON, HUNTINGTON & SAVAGE. (See above.)

Titles : *Webster's Academic Dictionary*.

Webster's High School Dictionary.

Webster's University Dictionary.

Webster's Pocket Dictionary.

Extensively published by these publishers (one publication going thro 15 and one thro 13 editions), and sold continually during 17 years, as shown above (fols. 3203, 3215, 3193, 3189, 3212).

The period of these Huntington publications continued for seven years after the complainant began to publish a Webster dictionary in 1847.

VII.

1856-1857 and later.

Publishers : MASON BROTHERS, New York, 1856.

Titles : *Webster's Academic Dictionary* (Revised Edition).

Copyright : 1856, by George & Charles Merriam.

Also,

Title : *Webster's School Dictionary*.

Copyright : 1856, by G. & C. Merriam.

And

Webster's High School Dictionary.

Copyright : 1856, by G. & C. Merriam.

These three publications are especially significant because they show that the complainant, although it controlled the situation as proprietor of the copyrights, expressly permitted Mason Brothers to use the title " Webster's " in the title of the Dictionary, and to assert, in so many words, " Published by Mason Brothers," with no reference of any kind to the complainant (Record, page 678).

How many years Mason Brothers continued to sell these dictionaries does not appear, but as they were in the dictionary business in 1857 (fol. 7146) the sales probably continued long after that.

VIII.

1856-1876 or later.

Publisher : J. B. LIPPINCOTT & COMPANY, Philadelphia, 1876 (fol. 2440).

Titles : *Webster's Royal Octavo Dictionary*. *Webster's New University Dictionary*.

Webster's Pronouncing Dictionary, 1856 (Record, page 1780).

Copyright : 1857 (fol. 2178) by Webster's children ; 1847 by Chauncey Goodrich, and 1860 by G. & C. Merriam (fol. 2740).

The large sums of money (\$50,000 and various annual payments) paid by complainants in 1858 for the right to share in the privilege of publishing the above two books—although the Lippincott's reserved to *themselves* an *exclusive* right to continue the publication of the Royal Octavo till 1871 (fol. 3178), shows how extensive Lippincott's business in these books was.

The Lippincotts continued to publish the Royal Octavo after 1871, viz., till 1876 or later (fol. 2740).

The Lippincotts also began to publish in 1867 an abridgement of the quarto edition of *Webster's Dictionary* and in 1868 a *Webster's Primary* school dictionary, the rights of which do not appear to have ever been assigned and which, therefore, presumably continued during the copyright period, viz., till 1909 and 1910.

The period the Lippincott's use of the name "Webster" extensively certainly covers twenty years, and, if the last two books above mentioned continued to be published as aforesaid, covers 33 years, of the period of 42 years during which Judge COLT found that the complainant was the SOLE publisher using that name. The Lippincotts' right to use the name "Webster" as the title of a dictionary published by them was, during 20 years or more, expressly recognized by the complainant (Record, p. 795).

IX.

1872 and later.

Publishers : J. DUFFY'S SONS & COMPANY.

Title : *Webster's Pronouncing Dictionary* (Record, pp. 1786, 1787).

X.

1879-1912.

Publishers : HURST & COMPANY.

Title : *Hurst's Peabody Webster* (Defendant's Exhibit).

Copyrighted first in 1879 and very extensively sold (*ib.* and Record, page 1789).

XI.

1880-1889.

Publishers : WORLD PUBLISHING COMPANY, Nassau St., New York.

Title : *Webster's Dictionary*.

A witness personally sold this book two or three years. It was on sale "in the eighties" (fols. 5191, 5192, 5572, 5573).

XII.

1885-1890.

Publishers: WARD, LOCKE & Co.

Title: *Webster's Dictionary*.

This was a set of English publications sold in this country, varying in size from Crown Octavo to pocket editions (fols. 4773-4796).

A witness personally sold these books in "very considerable quantities" between the dates given (Record, fol. 4773), and it does not appear that dealings in it then ceased.

The following Webster Dictionaries, published by Ivison, Blakeman, Taylor & Company, Mason Brothers and American Book Company during the period from 1847 till 1889, had the complainant's name printed on the title page, in small type, under the publisher's name in heavy type; but the obvious effect of the printing of the other name in big type was to associate the name "Webster" solely with the one whose name was conspicuously proclaimed as the source of origin and ownership, and who alone advertised and dealt in the book.

We find the imprint of American Book Company on the covers of such of their books as are in evidence, but no reference on such covers to the Merriams. We find also that the Merriams name was printed usually in association with J. B. Lippincott & Co. of Philadelphia, Wilson Hinkle & Co. of Cincinnati, and others. The question in this case being whether the title Webster's Dictionary is associated in the public mind solely with complainant, it is of utmost importance if complainant has expressly authorized others to use that title extensively in such a way as to associate the title with other publishers.

As the evidence shows that Ivison, Blakeman & Taylor's license to sell the following Webster's continued until the American Book Company succeeded them (fols. 532, 533) in 1892 (fols. 2811, 2812) we assume that their following publications continued until 1892.

XIII.

1856-1857 or later.

Publishers : MASON BROTHERS.

Titles : *Webster's Counting House and Family Dictionary ;*
Webster's Dictionary, and
Webster's High School Dictionary.

Copyrights in 1856 and 1857 by G. & C. Merriam.

On the title pages, in the place where the publisher's name usually appears, we find the following :

" New York

MASON BROTHERS

Springfield, Mass. : G. & C. Merriam."

(Record, pp. 679, 682, 683).

Such an inscription would undoubtedly indicate to the public that Mason Brothers were publishers, and, if anyone noticed the Merriam name, they would find it printed in such a way that it naturally indicated that in Springfield the book might be purchased from the publishers' agents, G. & C. Merriam (Record, pp. 679, 682, 683).

XIV.

1867-1892.

Publishers : IVISON, BLAKEMAN & TAYLOR, New York and Chicago (1872).

Title : *Webster's Primary Dictionary.*

Copyright : 1867 by G. & C. Merriam.

On the title pages, in the place where the publisher's name usually appears, we find the following :

IVISON, BLAKEMAN, TAYLOR & CO.,

New York & Chicago.

Philadelphia : J. B. Lippincott & Co. Cincinnati : Wilson, Hinkle & Co. Springfield, Mass. : G. & C. Merriam " (fol. 2747 ; Record, p. 687).

This would of course indicate that Ivison, Blakeman,

Taylor & Company were the publishers, and might suggest, to anyone noticing the small print beneath, that these various other concerns were local agents for the distribution of the book; but, as a matter of fact, the testimony shows that the Merriams took no part in the advertising, sale or distribution of the various Ivison, or American Book Company Websters. These concerns were conducting their own independent businesses. Furthermore, an inspection of the book discloses the Ivison initials stamped on the covers, and no reference thereon to the Merriams.

XV.

1857-1892 or later.

Publisher: AMERICAN BOOK COMPANY.

Title: *Webster's Academic Dictionary*.

On the title page, in the place where the publisher's name usually appears, we find the following:

**"NEW YORK: CINCINNATI: CHICAGO
AMERICAN BOOK COMPANY.**

Springfield, Mass.: G. & C. Merriam Co."

XVI.

1867-1892.

Publishers: IVISON, PHINNEY, BLAKEMAN & Co.

Title: *Webster's Army & Navy Dictionary*.

Copyright: 1867, by G. & C. Merriam.

Beneath the publishers' name appears:

"Philadelphia: J. B. Lippincott & Co., Cincinnati: Sargent, Wilson & Hinkle. Chicago: S. G. Griggs & Co."

1867.

"G. & C. Merriam, Springfield" (Record, p. 689).

XVII.

1867-

Publishers : IVison, Blakeman, Taylor & Co.

Title : *Webster's New Counting House and Family Dictionary.*

Copyright : 1867, by G. & C. Merriam.

On the title page we find :

New York : IVison, Blakeman, Taylor & Co.

"Springfield, Mass. : G. & C. Merriam.

Cincinnati, Ohio : Van Antwerp, Bragg & Co." (Page 691).

XVIII.

1868-Publishers : IVison, Blakeman, Taylor & Co. *New York.*Title : *Webster's High School Dictionary.*

Copyright : 1868, by G. & C. Merriam.

On the title page we find :

New York : IVison, Blakeman, Taylor & Co.

"Springfield, Mass. : G. & C. Merriam.

Cincinnati, Ohio : Van Antwerp, Bragg & Co." (Page 692).

XIX.

1870-Publishers : IVison, Blakeman, Taylor & Co. *New York.*Title : *Webster's Pocket Dictionary.*

Copyright : 1870, by G. & C. Merriam.

On the title page we find :

New York : IVison, Blakeman, Taylor & Co.

"Springfield, Mass. : G. & C. Merriam" (Page 693).

XX.

1884.Publishers : IVison, Blakeman, Taylor & Co. *New York and Chicago.*Title : "*Webster's Practical Dictionary.*"

Springfield, Mass. : G. & C. Merriam (Page 696).

XXI.

1884.

IVISON, BLAKEMAN, TAYLOR & CO. New York and Chicago (Page 696).

Webster's Condensed Dictionary.

Springfield, Mass.: G. & C. Merriam Company (Page 700).

Even leaving out of consideration the above dictionaries on which the Merriam name appears, in small type, under the publishers' name, we find that between 1847 and 1889 not only were complainants *not* the sole publishers of Webster's Dictionaries, but, on the contrary, that at all times during that period at least one of the following publishers, viz., N. & J. White, J. S. & C. Adams, Harper & Brothers, White & Sheffield, Huntington & Company, Huntington & Savage, Mason Brothers, J. B. Lippincott & Company, Hurst Company, J. Duffy Sons & Co., World Publishing Co. and Ward, Locke & Co. were publishing dictionaries under that title; that, during most of that period, several of these publishers were publishing simultaneously dictionaries under that title, and that, during that period, the right of the following publishers to use the name "Webster" as the title of a dictionary published by them was expressly recognized by complainant by contract or otherwise, viz., Harper & Brothers, 1847-1853 (fols. 3142, 3143), White & Sheffield, 1847-1853 (*ib.*), Mason Brothers, 1856- (p. 678), and J. B. Lippincott & Company, 1857-1876 (p. 795).

Not only were the Merriams not the exclusive publishers of Webster's dictionaries from 1847 till 1889, but the Webster dictionaries published by others, during that period, exceeded the number published by them.

There is not a scintilla of evidence in the record to show how many dictionaries the complainant sold between 1847 and 1864. Presumably it sold Webster Dictionaries during that period because it appears that it published them during that period. That presumption, however, applies with equal force to the other publishers of Webster Dictionaries who are shown to have published them during the same period, and in the absence of evidence as to the number sold by each it must

be presumed that each publisher sold the same number. It follows, therefore, that between 1847 and 1864 the aggregate number of Webster Dictionaries sold by publishers other than the complainant must have exceeded the number sold by the complainant.

There is no evidence to show how many dictionaries the complainant sold between 1864 and 1889 (25 years) unless the evidence of Mr. Washburn that between 1864 and 1912 (48 years) the complainant sold 12,000,000 Websters Dictionaries can be treated as evidence showing how many were sold between 1864 and 1889 (the first 25 years) by a process of apportionment. *Non constat*, however, that between 1864 and 1889, when the business was beginning, the sales were comparatively small, and that each of the other publishers who were selling Websters Dictionaries during that period sold as many Websters Dictionaries as the complainant, making the aggregate of the sales by persons other than the complainant greater than the sales made during the same period by the complainant.

The question of fact in this case is whether complainant has proven, in addition to a complete disassociation of the name "Webster's" with that author's work, an association of the name "Webster's" with it as publisher so extensive, and practically exclusive, that the name "Webster's" has come to be associated exclusively with complainant's publishing house as its trade-name. Therefore consideration must also be given to the fact that, in addition to the above books sold by complainant's competitors between 1847 and 1889, all of the Webster's dictionaries bearing the imprint of other publishers, sold *before* 1847, which remained in circulation *after* 1847, so long as they existed and were referred to, operated to prevent an exclusive association of the title with the complainant. Practically all of the Webster's published by other publishers before 1847 were in circulation during the period from 1847 until 1889, because it is a well known fact that a dictionary remains on the shelves of its buyer or his family and is there consulted for 30 or 40 years after its purchase. Prof. Peck testified that when he was a young man (about 1882-1885) he knew a number of households which possessed and used the 1828 edition of Webster's.

The burden of proof is throughout upon the complainant,

and, it appearing that other publishers were engaged in selling Webster's during the period in question, if complainant expects to diminish the force of that fact by claiming that their sales were less than its sales, it must show what the extent of their sales were.

Indeed, the evidence shows that in 1890, one of the complainant's competitors publishing the reprint of the 1847 edition, disposed of over a million copies in two or three years, and the evidence of the sales of hundreds of thousands of the defendant's books during a brief newspaper campaign shows how the sales of one particular year may be made very great by enterprise in the selling department. Consequently, it would be mere speculation to say that because 12,000,000 copies were sold by the complainant between 1864 and 1912, a period of 48 years, we may presume without evidence either that a proportionate number were sold during the first 25 years of that period or, if so, that the sales of other dealers during that period were less than the complainant's sales—so far less as to make the complainant practically the sole publisher.

On the evidence as it now stands, therefore, it would appear that persons other than the complainant published and sold more dictionaries than it did during the period from 1847 to 1864, and that from 1864 to 1889 there is no evidence to show that the complainant's sales exceeded the sales of its competitors.

Not only, therefore, was the finding of Judge COLT, to the effect that "from 1847 to 1849 the Merriams were the sole publishers of Webster's Dictionaries," erroneous, but it appears, on the contrary, that throughout that period other publishers were selling Webster Dictionaries, and it does not appear that the sales of the complainant equaled the sales of these competitors.

1889 to date.

Publication of Big Dictionaries by Competitors.

Soon after 1889, when the copyright of the 1847 edition expired, many publishers began to republish exact reproductions of that dictionary and sell it, at cheap rates, in

tremendous quantities. There were at least seven of these dealers, namely,

Henry G. Allen.
 Brock & Rankin.
 W. B. Conkey Co.
 M. A. Donohue & Co.
 Geo. M. Hill & Co.
 Geo. W. Ogilvie.
 The Werner Company.

One concern alone, *Donohue & Company*, sold a million of the books in a few years, that is only 200,000 less than the total number of big dictionaries sold by complainant in the 48 years from 1864 to 1912 (fol. 4188). It is fair to presume that the other six publishers of this reprint (who sold at a cheap rate) sold 200,000 or more ; for their competition was so lively that complainant soon resorted to its usual tactics of trying to drive its competitors from the field by imposing upon them the heavy expense of defending law suits, like the present one, an almost prohibitive price for most dealers to pay for the enjoyment of their legal right to deal in the Webster product.

Merriam v. Holloway Co., 43 Fed., 450 (1890).

Merriam v. Famous Shoes Co., 47 Fed., 411 (1891).

Merriam v. Texas Siftings Co., 49 Fed., 944 (1892).

In addition to the above reprints Ogilvie and the Saalfeld Company as his successor have published and sold, from 1904, on, and now publish and sell a thoroughly revised and much enlarged Webster's dictionary (fols. 7087, 7088). This book was approved by School Boards in Cincinnati, Philadelphia and Yonkers (fol. 7171). At least one bookseller recommended it as better than the best big Merriam Webster on the market (fols. 5668-5671). Ogilvie spent more than \$70,000 in getting it up and spent about \$100,000 in advertising it. The Saalfeld Company spent \$25,000 in advertising it (fols. 7093, 7097, 7176). Its sales must have been very extensive.

Since complainant's sale of its 1,200,000 big dictionaries extended over 48 years (viz., 1864 to 1912) its competitors' sales of an equal or greater number of big dictionaries has

taken place in the last twenty-two years, it appears that complainant's competitors have, during the lives of the present generation, sold more big Webster dictionaries bearing their imprints than the number sold by complainants bearing its imprint.

Publication of Abridged Dictionaries by Competitors.

In the matter of abridged dictionaries entitled "Webster's" complainant's witness Washburn testified that since 1864 (48 years) some 10,800,000 of complainant's abridged books have been sold.

But we find that the witness includes, in this number, the abridged dictionaries sold to school boards and schools by Ivison, Blakeman, Taylor & Company and American Book Company (fols. 708, 709). These dictionaries, though printed from plates provided by complainant, were "published" (we use their witness' own words, fols. 709, 2614) by Ivison, Blakeman, Taylor & Co. and American Book Company (fols. 538, 709, 710, 2614); were advertised by them at their own expense as their own publications (fols. 532, 533); and were dealt in solely by them.

Complainant omits these books from its printed list of its own publications circulated as an advertisement. It properly omits them; for their publication and sale constitutes no part of the complainant's business (See pp. 659-662).

All these books bore the imprint of the Ivison firm or American Book Company as publishers.

The American Book Company's dictionaries bore its name, only, on the backs thereof.

The sale and circulation of these books, far from tending to create an exclusive association between the name "Webster's" and the complainant, naturally produced the very opposite effect.

The printing of complainant's name, on the title pages, in small print, under the names of these publishers, in big print, was so inconspicuous and unmeaning, that it in no way associated them with these publishers' trade.

Is it conceivable that the trade built up by these firms in

Webster's dictionaries would go to the complainant if these firms ceased to use complainant's plates, omitted the ambiguous and inconspicuous printing of complainant's name in small print under their own names in big print on the title page, and, under their own names, as before, published and sold Webster's dictionaries printed from *defendant's* plates?

If that question be answered "No," then it follows that the Webster Dictionary trade built up by the Ivison firm and American Book Company is associated exclusively with and attached exclusively to those firms and not at all to the complainant; and that the name "Webster's" on their dictionaries does not mean dictionaries published by the complainant.

The circulation of dictionaries entitled "Webster's" in the schools is the fact upon which complainant has placed its principal reliance to prove extensive association of the name "Webster's" with it. It now appears that the association of the title Webster's on those books was not with complainant, as publisher and dealer, but with the Ivison firm and its successor, American Book Company.

As the schools were the largest fields for abridged books, we may fairly assume that more than half of the 10,800,000 abridged books referred to by the witness, Washburn (fol. 538), were books published and dealt in by the Ivison firm and American Book Company as their publications.

The terrorizing, which complainant has carried on by putting every successful publisher of Webster's dictionary to the expenditure of thousands of dollars to defend suits like this one, has made it impossible to secure from many of such publishers proof of the extent of their sales. But we can prove by inference that its competitors' sales have greatly exceeded complainant's.

More than half of the 10,800,000 referred to by Washburn turn out to be publications of the Ivison firm or of the American Book Company. Making the most favorable assumption which complainant could ask, namely, that one-third of the 10,800,000 (*i. e.*, 3,600,000) were sold during the 25 years from 1864 to 1889, and two-thirds (*i. e.*, 7,200,000) were sold during the 23 years from 1889 to 1912, and that "the greater part" of these which American Book Company published and sold was only a little over half, it would seem that complainant pub-

lished and sold 3,500,000 abridged dictionaries from 1889 to 1912. Add the following :

The sales by newspapers of defendant's Webster's must have exceeded 500,000 or 600,000 when the testimony was taken, and have continued undiminished, unaffected in the slightest degree by the cautionary notice which the average buyer is not interested in, because the average buyer has no preference for the publisher to which it refers.

Laird & Lee's Webster's, on sale since about 1892 (see fol. 5000), have been adopted by the public schools of the States of Indiana, Illinois, Ohio, Michigan, Maryland, Kansas, Nebraska, Missouri, Oklahoma and Utah, and especially in the cities of Baltimore, Chicago, Indianapolis, Salt Lake City, Los Angeles and Seattle. Moreover, the Webster's Dictionaries published by Laird & Lee have been awarded gold medals at the great expositions of St. Louis, Charleston, Portland, Oregon, and the Pan American at Buffalo (fols. 5010-5012). The firm of Laird & Lee alone claim to have spent as much money as the Merriam Company in advertising the name "Webster's" (fol. 4194). The extent of that firm's sales may be inferred from the fact that it has sold over 1,000,000 Webster's Vest Pocket Dictionaries. (See advertisement in defendant's exhibit "Laird & Lee's Webster's Modern Dictionary.") Laird & Lee's publications include :

Webster's Modern Dictionary (fols. 5000, 7322).

Webster's Vest Pocket Dictionary (fol. 5000).

Webster's People's Dictionary (fol. 4027).

Webster's Family Dictionary (fol. 4833).

Webster-Grimm Dictionary (fol. 7107).

Webster-Salva Dictionary (fol. 7107).

Webster-Littre Dictionary (see advertisement in "Webster's Modern Dictionary").

Webster's New Standard Dictionary. Elementary School Edition.

Webster's New Standard Dictionary. Intermediate School Edition.

Webster's New Standard Dictionary. Common School Edition.

Webster's New Standard Dictionary. Illustrated Library Edition.

Webster's New Standard American Dictionary. Encyclopedic Edition (fols. 7322-8).

Ogilvie's and Saalfeld's sales of their abridged dictionaries, with \$125,000 of advertising, must have been very extensive, though we could not secure exact evidence of their extent because of a suit for an accounting threatened by the Merriams.

The complete list of publishers, mentioned in the record, who published and sold dictionaries with "Webster's" in the title, between 1889 and the present day, is as follows :

Publishers of Webster's Dictionaries from 1889 to date.

Alden & Company, fol. 5684,

" Webster's Unabridged," fol. 5707.

Henry G. Allen, fols. 5000, 7113,

Webster's Unabridged. Leon testified that he knew this book as early as 1890.

Allison,

Webster's Dictionary, fol. 4062. Mentioned by Hale in cross-examination.

American Book Co., McKnight, page 1421.

Barse & Hopkins, fol. 4026,

Webster's Home, School & Office Dictionary, fol. 4055.

W. B. Bechtold, fol. 7112.

Brock & Rankin, Chicago, Ill.,

Webster's Unabridged Dictionary, reprint. Fols. 4196, 4776, 4793.

Doran dealt in this book. His largest dealings were about 1900.

William Bulger, Chicago, Ill.,

Webster's Pocket Dictionary & Speller, copyrighted 1895, imprint 1895. Book offered in evidence, fol. 7314. On sale, 1912.

A. L. Burt, New York, N. Y., fols. 4027, 7111,

A Concise Webster's Dictionary, copyrighted 1895.

Book purchased in 1912; no date in imprint; offered in evidence fol. 7315.

Commonwealth Publishing Co., New York, N. Y.,

Webster's American Standard Dictionary. Copyrighted 1909; book purchased 1912. Offered in evidence fol. 7316.

- W. B. Conkey Co., Chicago, Ill., fol. 7106,
 Webster's Original Unabridged Dictionary,
 Webster's Business & College Dictionary. This book
 offered in evidence fol. 7320; copyrighted 1911; im-
 print 1911, with 1910 census; purchased 1912.
- Cupples & Leon Company, New York, N. Y., fol. 5026,
 Webster's New Century Dictionary, published from the
 middle of 1907 to 1912.
- M. A. Donohue & Co., Chicago, Ill., fols. 7106, 4187, 4999,
 1421,
 Donohue's Vest-Pocket Webster.
 Donohue's Handy American Webster.
 Donohue's Reprint of Webster's Unabridged, over a
 million copies (fol. 4188).
 Webster's Library Dictionary for Home, School & Office,
 fol. 4027. Last book offered in evidence fol. 7316;
 copyrighted 1911; called 1911 edition, on sale 1912.
- Donohue & Henneberry, Chicago, Ill., fol. 4216,
 Vest-Pocket Webster's Dictionary,
 Webster's Unabridged Dictionary,
 Published from about 1894 on, fol. 5001.
- Excelsior Publishing Co., New York, N. Y., fol. 7112,
 Excelsior Webster's Pocket Speller & Definer; offered
 in evidence fol. 7313; copyrighted 1892. On sale,
 1912.
- Frank Brothers, fol. 7112.
- Funk, Michigan, fol. 4197.
- Hampden Publishing Co., fol. 7111.
- George M. Hill & Co., Chicago, Ill., fols. 5683, 4199, 4790,
 Webster's Unabridged Dictionary, a reprint, fol. 4027;
 Webster's Vest Pocket Dictionary, offered in evidence
 7311; copyrighted 1899; purchased 1912.
- John Hovenden,
 Webster's Standard American Dictionary, fol. 4998.
- Hurst & Co., New York, N. Y., fol. 4833,
 Webster's Pocket Dictionary.
 Hurst's Webster's Dictionary, offered in evidence, fol.
 7315; copyrighted 1879 and 1882; imprint 1912.
 Ogilvie testified, fol. 7111 and 7115, that this book had
 a "large sale in the seventies"; Leon testified that he
 knew this book in the early nineties, fol. 5001.

Iverson, Blakeman, Taylor & Co.,

Mentioned by Hale as "a licensee publishing a Merriam's dictionary under arrangement with Merriams," fol. 7249.

Laird & Lee, Chicago, Ill.

Webster's Modern Dictionary, awarded gold medal and diploma, Lewis & Clark Centennial Exposition, Portland, Oregon, 1905, fol. 4996. Offered in evidence, fol. 7322 ; copyrighted 1895, 1899, 1903, 1905, 1906, on sale 1912.

Vest-Pocket Webster's, fol. 5000, sold, as testified by Leon, in early nineties, about 1893. Described in advertisement at back of Webster's Modern Dictionary, (See above) as "the first vest-pocket Webster's dictionary ever published, over a million copies sold."

Webster's New Standard Dictionary of the English Language, Elementary School Edition ; offered in evidence fol. 7323 ; copyrighted 1907, on sale, 1912.

Webster's New Standard Dictionary of the English Language, Intermediate School Edition ; offered in evidence fol. 7324 ; copyrighted 1906-1907 ; on sale 1912 ; entered at Stationer's Hall, London, England.

Webster's New Standard Dictionary of the English Language, Common School Edition ; awarded gold medals and diplomas at World's Expositions, offered in evidence fol. 7325 ; copyrighted 1903, 1904, 1905, 1907, 1908, 1911 ; entered at Stationer's Hall, London, England. On sale 1912. Déposé au Ministère de l'Intérieur et à Bibliothèque Nationale, Paris, France.

Webster's New Standard Dictionary, Illustrated Library Edition, gold medal awarded 1904 ; awarded gold medals at leading World's Expositions ; offered in evidence, fol. 7327 ; copyrighted 1903, 1904, 1905, 1907, 1908 ; entered at Stationer's Hall, London, England. Déposé au Ministère de l'Intérieur et à la Bibliothèque Nationale, Paris, France. On sale, 1912.

Webster's New Standard American Dictionary, Encyclopedic Edition ; offered in evidence, fol. 7328 ; copyrighted 1911, on sale 1912.

Webster's People's Dictionary, fol. 4027.

Webster's Family Dictionary, fol. 4833.

Webster Grimm Dictionary, fol. 7108.

Webster Salva Dictionary, fol. 7108.

Webster Littré (see back of Webster's Modern Dictionary).

Lamont, O'Donnell & Co., fols. 7112, 4196.

Loomis Brothers, fols. 7112, 4196.

David McKay, Philadelphia, Pa., fols. 4997, 7280, 4834, 5646, 7107.

Webster's Vest-Pocket Dictionary.

Madison Book Company, Chicago, Ill.

Webster's Twentieth Century Dictionary, fols. 2434, 2651; copyrighted, 1902.

Marsh & Company, fol. 4196.

E. E. Miles, South Lancaster, Mass.,

Miles' Vest-Pocket Webster's, fol. 7106.

Webster's Common Sense Dictionary, fol. 4833.

Monarch Book Company, fol. 4998.

Mutual Publishing Company, fol. 7112.

National Publishing Co., Philadelphia, Pa., fol. 4998,
Webster's Dictionary.

F. Tennyson Neely, Chicago, Ill., and New York, N. Y., fol. 4027.

Webster's Pronouncing Dictionary; offered in evidence,
fol. 7314; no copyright, imprint 1895. On sale, 1912.

George W. Noble, Chicago, Ill.

Peerless Webster Self-Pronouncing Dictionary; offered
in evidence, fol. 7313; copyright 1899; imprint 1911;
on sale, 1912.

George W. Ogilvie, Chicago, Ill., and New York, N. Y.,

Published five Webster's Dictionaries, fol. 7111.

George W. Ogilvie & Co.,

Published one Webster's Dictionary, fol. 7111.

I. & M. Ottenheimer,

Vest-Pocket Webster's Dictionary, fol. 7112.

R. S. Peale & Co., fol. 4196, 7112.

People's Publishing Co., fol. 7111.

Popular Publishing Co., fol. 4027,

Webster's Pictorial Dictionary.

Reilly & Britton, Chicago, Ill., fol. 4195.

Riverside Publishing Co., Chicago, Ill., fol. 7295.

Thin paper edition of Webster's Universal Dictionary.

Saalfeld Publishing Co., Akron, O., fols. 7110, 4998, 4833, 4196, 7308.

Webster's Encyclopedic Dictionary,
 Webster's Vest-Pocket Dictionary,
 Webster's New Unabridged Dictionary,
 Webster's Imperial Dictionary,
 Webster's Intercollegiate Dictionary,
 Webster's Adequate Dictionary,
 Webster's Sterling Dictionary,
 Webster's Original Unabridged Dictionary,
 Webster's Reliable Dictionary, fol. 4026.

Success Publishing Co., fol. 6765.

Syndicate Publishing Co., fol. 1249.

Webster's New Illustrated Dictionary,
 Thompson & Thomas, Chicago, Ill., fols. 4027, 4196, 7119.

Webster's New Unabridged Dictionary, fol. 4832,
 Webster's Vest-Pocket Dictionary, fol. 4832,
 Webster's School & Office Dictionary; offered in evidence
 fol. 7317; copyrighted 1901, 1903, 1905; imprint 1909;
 on sale, 1912.

C. C. Thomas & Co. Chicago, Ill.,

Webster's School & Office Dictionary, fol. 4908.

W. R. Van Sant, fol. 7111.

L. W. Walter Co., Chicago, Ill., fol. 7107,

Webster's Modern Dictionary for Home, School & Office;
 offered in evidence fol. 7321; copyrighted 1907, 1908;
 called 1910 edition; on sale, 1912.

Wehman Brothers, New York, N. Y.,

Latest Vest-Pocket Webster's; offered in evidence, fol.
 7311; copyrighted 1893, 1894, 1908; on sale, 1912.

E. A. Weeks Company,

Vest-Pocket Webster's Dictionary, fols. 5683, 5705; title
 changed afterwards.

Werner Company, Akron, O.,

Webster's Encyclopedia Dictionary, fols. 7109, 7380, 4236.

John C. Winston Co., Philadelphia, Pa., and Chicago, Ill., fol.
 7111.

Webster's New Self-Pronouncing Dictionary, fol. 4997,
 Webster's Universal Self-Pronouncing Dictionary, fol.
 4026; offered in evidence, fol. 7318; copyrighted 1908,
 1911. McKnight "sold quite a bunch of these" in
 December, 1911, in Philadelphia, fol. 5689.

Summary of Testimony Re Advertising By Other Publishers Than the Merriams.

Hesslein (fol. 4038). After giving list of non-Merriam publishers, witness says these books have been advertised in trade papers and newspapers and by catalogs, also by retailers in the newspapers. Witness could give no estimate of cost. His period of observation 22 years, during which, he said, "I believe I have seen more advertising from others than from the Merriam Company" (fol. 4032). In this he had not included the "expensive newspaper advertising" of the Syndicate Publishing Co. (fol. 4034).

Witness Donohue spent \$100,000 in the early nineties advertising his reprint edition. He spent from \$15,000 to \$20,000 advertising his other Webster dictionaries (fol. 4190). In the 12 months ending May 3, 1912, he spent \$5,000 advertising these dictionaries (fol. 4206). During the last 20 years his "impression is that about a fifth of all the Webster's dictionaries advertised that" he had "observed were advertised by the G. & C. Merriam Co." (fol. 4193). Witness said, "Mr. Lee told me that he had spent as much money as Merriam had advertising the name Webster's" (fol. 4194). At folio 4198 witness mentioned the following mail order houses as having advertised Webster's Dictionaries: Sears, Roebuck & Co.; Montgomery, Ward & Co.; John M. Smyth & Co.; Cash Buyers Union; Universal Supply Co.; David B. Clarkson Co.; Book Supply Co. Some of the catalogs of these houses are printed by the witness, Donohue, himself (fol. 4204). Witness said (fol. 4201) with reference to the advertising in these catalogs, "I have seen more advertising of Webster's books of other publishers than I have of Merriams in these catalogs" and at fol. 4204, "I estimate during the last 20 years about one-fifth of the advertising was Merriam and about four-fifth others. That is the advertising I have seen in those catalogs."

Wright testified, at fol. 4332, that "to the best of my knowledge and belief the amount" of advertising devoted to the books of the Syndicate Publishing Co. between February, 1911, and May, 1912, "would exceed \$500,000." At fol. 4330 he said the advertising was in the newspapers of

"between 300 and 400 towns and cities in the United States and Canada" running in each place "from four to six months and occasionally a shorter period." At fol. 4539, the witness said, supplementing his earlier statement, "I have since had the advertising measured up and at the current rates of the newspapers I find that if the space had been paid for the total amount would exceed two and one-half million dollars." At folios 4542-4545, the witness said, "the combined circulation of the newspapers which advertised the dictionary" is calculated to be "in excess of 600,000,000." "In each one of these newspapers appeared the announcement of the dictionary."

Witness Sherwood, at folio 4855, said: "The G. & C. Merriam Co. published one or two varieties of dictionaries, while the balance of the publishers co-jointly published hundreds of various Webster's dictionaries, all of which they advertised in a great many directions." Asked what proportion of advertising was in the name of the G. & C. Merriam Co., the witness said (fol. 4856): "I should say that a conservative estimate of the ratio would place it at about five to one in favor of the numerous publishers, possibly greater than that." Folio 4857, witness's estimate based on whole experience in book business, which had continued (fol. 4827) upwards of 20 years.

Witness Leon testified at folio 5003 that during 24 years in the book business he had seen advertising by other publishers, consisting of newspapers, circulars, catalogues of publishers and catalogues of mail order houses. At folio 5004 the witness said: "I think almost every dry goods house that handles books and dictionaries has advertised" Webster's dictionaries not published by the Merriam Co. Witness said (fol. 5006) that during the past 15 or 20 years Montgomery, Ward & Co., Sears, Roebuck & Co., and the Book Supply Co. of Chicago, had to his knowledge advertised Webster's dictionaries not published by the G. & C. Merriam Co. These mail order houses distribute from two to five million catalogs each year. At fol. 5008, witness estimated advertising given to Webster's dictionaries not published by Merriam in the last 20 years, not including the recent advertising of Syndicate, at over a million dollars.

Evidence of how the advertising of Syndicate boomed the Webster business is found in testimony of McKnight at

fol. 5691. Witness was selling Winston's Webster's in Philadelphia during Syndicate campaign in Philadelphia Press. "Many customers asked for book advertised by Press" (fol. 5692). "In that way I discovered I was getting benefit from the Press advertising."

Peck (fols. 6312-6315): "This I may say; it is a matter of publicity. You are perfectly well aware of that. The Merriams do not advertise Webster's dictionary very much. You would hardly know there was a Webster dictionary in the country if you left it to them, but all the other publishers of Webster's dictionary, or the Websterian dictionary, whichever you like, spent immense amounts of money advertising their books, and they sell them at prices—very good books they are too, many of them—they sell them at prices which put the possession of them in the hands of people that could not afford to buy a great big unabridged ten or twelve dollar book, so I say that every book that bears the name of Webster's dictionary has contributed to the benefit and the pecuniary profit of the Merriams and in a way to perpetuating the name of Webster in connection with dictionaries. If there were not any small dictionaries bearing the name of Webster, I do not believe the Merriams could make any money out of their work. There have been millions of dollars spent in advertising these abridged dictionaries."

The witness Ogilvie, at folio 7091, said that during 13 years, ending in 1904, while preparing his revised and enlarged Webster's, he had from one to 100 assistants. He kept no accurate account of his expenses prior to the last or the thirteenth year. During that year his expenses were \$70,000. "It might have been as much more or more than as much more" prior to that time. At folio 7097, Ogilvie testifies that he spent \$100,000 advertising his Webster's Imperial or Webster's Universal during the years 1903 to 1908 (fol. 7152). Ogilvie observed advertising for thirty years closely. Webster's dictionary was exploited with everything in connection with which a dictionary could be sold, from typewriter ribbons to suits of clothes and household furniture. Advertised in newspapers very extensively; in magazines extensively; in catalogues of mail order houses "Sears, Roebuck & Co., John M. Smythe Co., Cash Buyers Union, The Book Supply Co., Sims, Wilson & Sims, all of whom do a very extensive mail

order business and issue millions of catalogues a year. One of the concerns alone, Sears, Roebuck & Co., issue approximately 7,000,000." Folio 7156—most of the Webster's dictionaries exploited by the mail order houses were published by other houses than Merriam. Folio 7158—many publishers also used canvassers. Folio 7162—"I should say that not less than \$5,000,000 worth of" advertising by other publishers than Merriam "have been under my observation." Folio 7163—"I have seen very little of Merriams' advertising as compared with the others—a very small percentage." Before 1890, during a period of eight years, when the witness testified he had closely observed advertising by various publishers of dictionaries (fol. 7150), witness said (fol. 7165) that so far as his observation was concerned the advertising of the Merriam Co. had not been extensive. Folio 7163—there was not a great deal of advertising of Webster's dictionaries before 1890. After 1890 they were "exploited from coast to coast" and advertising increased "by leaps and bounds" (fol. 7164). Folio 7176—advertising of the Saalfeld Co. in connection with its Webster's dictionaries to Ogilvie's knowledge amounted to \$25,000. "That figure was not more than 25 or 30 per cent. of the total."

Facts showing that "Webster's" as the title of a dictionary has uniformly been used as the name of Webster's work in the book.

As further negating complainant's claim that the name "Webster's" ceased to be the name of Webster's work, and came to mean one publishing house we call attention to the following facts:

All dictionaries in circulation or published under the title "Webster's" either by complainant or by its competitors, were, up to 1864, wholly Webster's work, and those published from 1864 until 1909, by complainant and its competitors, retained Webster's most famous work, his definitions of the standard words of the language. Therefore the name "Webster's" could not mean anything but Webster's work in these books.

Not classing as revisions the complainant's 1847 edition, which complainant admits "was little more than the original work of 1828 brought from two volumes into one, pruned of some excrescences, and with moderate additions" (See Pre-

face to Webster's International), nor the additions, from time to time, of supplements and appendixes, the complainant's first revision of Webster's dictionary was made in 1864. It was entitled "Webster's Unabridged." A second revision was made in 1890 and was entitled "Webster's International." Complainant still sells both of these editions (fols. 2643, 2635).

In both of these books, viz., its editions of 1864 and 1890, complainant judiciously conserved

"those definitions of standard words which are Dr. Webster's especial merit"; and proclaimed that its book "retains that excellence in definitions which has made Webster the safe and familiar authority to which judge, journalist, scholar, artisan and business man refer."

See Publisher's statement in Webster's International.

As all the Webster's dictionaries of its competitors retained this distinguishing matter it appears that Webster's in the title of every dictionary published during the 58 years from 1806 until 1864 contained Webster's work, only, and that, from 1864 to date, all dictionaries so entitled (except complainant's 1909 edition) retained that body of excellent definitions of standard words which was Webster's best known product.

"Webster's" has, therefore, for 107 years described a definite and famous product, and has never lost its purely descriptive signification in the title of a dictionary as the name of that part of the book which Webster wrote.

The complainant itself has always used the name "Webster's" solely as the name of that part of the book which Webster wrote.

This is shown by the fact that

(a) From 1847 to 1890 always, and from 1890 until to-day on its "Unabridged" dictionary it stated in the most conspicuous type used on its title pages that the dictionary was "by Noah Webster, LL.D." and it always separately described under the names of the authors thereof, the revised or added matter contained in the book which Webster did not write;

(b) It always inserted opposite the title page a full-page engraving of Dr. Webster ;

(c) It always published in each of the books a memoir of Webster, which said in its first paragraph :

" It is natural for those who make frequent use of a work like this to desire a knowledge of the *author's* life ; "

(Italics ours).

(d) It always printed after the memoir of Noah Webster his own preface to the 1828 edition, under the title "*Author's Preface.*" The prefaces which followed by Goodrich and Porter were entitled "*Editor's Preface.*" (Italics ours).

(e) It always used distinctive titles to indicate the work of the editors, as distinguished from Webster as author of its books. Thus, when, in 1890, it published a dictionary which contained in addition to Webster's definitions of standard words, revised or added matter not written by Webster, it ceased to entitle the book merely " Webster's Dictionary " and added the new title " International " to identify the new matter in the new edition of that year, and in 1909 it added the new title " New International " to identify the new matter in that edition. Its editions of 1890 and 1909, as it admits in one of its prefaces, were in fact " popularly known " respectively as " the International " and " the New International. " In the preface of its 1909 edition occurs the following :

" In 1890 appeared another complete and more radical revision of the entire volume. Its new title, ' Webster's International Dictionary, ' marked the fact that the work of Webster and his successor had * * * been enriched by the scholarship of various people. "

Speaking of the title, " An American Dictionary of the English Language, " the complainant in its 1890 edition states :

" While always hitherto retained on the title-page, the adjective long ago passed out of popular use as a description of the book, which has for many years been known as the ' Unabridged. ' * * * "

Complainant then continues :

" Why now International ?

"Now, upon the issue of an edition so materially altered and improved as the present one is, the occasion seemed appropriate for a modification of the title."

Throughout the record we find the witnesses using the short titles, "the International," "the new International," as the distinguishing identifying titles of the revisions so named by the complainant.

(f) From the beginning complainant always conspicuously displayed, on the books it published and sold, its name "G. & C. Merriam" or "G. & C. Merriam Company." This name, signifying wholly origin and ownership, has been its only natural trade-name. This is the only name which has been exclusively used by it and exclusively associated with its dictionaries. The trade attached to this name is the only trade to which complainant is exclusively entitled. (This point is more fully discussed at pp. 105-7).

As the complainant has never ceased to proclaim Webster as the author of the principal part of the book which it published under the title "Webster's" Dictionary how can it have the effrontery to pretend that the public has disbelieved its reiterated assertion of that true fact, and has insisted on distorting the natural meaning of the term into a signification wholly different, viz. : as the fanciful name of a publishing house?

The facts heretofore stated are those which bear on what may be called the "Probabilities" as to whether "Webster's" in the title of a dictionary has wholly departed from Webster's personality as an author and has become exclusively associated in the public mind with one publishing house, as its commercial trade symbol.

We believe that the facts heretofore stated render it not only improbable that "Webster's" has departed from its natural and necessary signification, but on the contrary show affirmatively that his name in the title of dictionaries retains *its natural* meaning as the name of his work, and could not possibly, under the foregoing circumstances acquire a secondary meaning, signifying a single publishing house.

We next come to the direct evidence of this subject.

Opinion Testimony and Evidence of Ordinary Purchasers.

We do not believe that the Court will pay much attention to the opinions of the librarians and publishers who undertake to tell what understanding of the name "Webster's" dictionary resides in the mind of the average purchaser, especially when we find that only two of the 24 purchasers of our book, chosen by complainant, from among 500,000 or 600,000 as most favorable to its contention, exhibit any understanding of the term which even approximately corresponds with the foregoing opinions on that subject, the other twenty-two affirmatively or by clear implication contradicting the opinions referred to.

The publishers examined, adopted complainant's audacious theory that Noah Webster's fame and the fame of his product is its own personal property, the commerce in which it has a right to monopolize by monopolizing the title "Webster's."

The rule of expired copyrights which complainant and its fellow publishers purposely or through ignorance ignore may be stated as follows: If the complainant's commercial enterprise has kept alive a demand for the Webster product which is in the public domain, but that demand is wholly satisfied by an offering of the Webster product by any publisher, then any producer of the Webster product is entitled to enjoy the benefits of the demand for that product which the complainant's commercial enterprise aided to create.

A.

OPINION TESTIMONY.

Complainant's Witnesses:

Wadlin (page 467 *et seq.*), librarian of the Boston Public Library, says little that helps the complainant. He thinks that the present reputation of "Webster's" dictionaries is based on the complainant's 1864 edition (fol. 1873). That edition is in the public domain.

Mead, Editor of the "New England Magazine", says much that indicates that, in spite of his personal preferences for the

later *philology* of the Merriam books (defendant's book contains no philology), that the average buyer of a cheap book means by "Webster's", Webster's work (fols. 1896, 1899, 1900, 1922, 1923).

Draper, Commissioner of Education of the State of New York has for 40 years owned a "Webster's Unabridged" (fol. 1999) (the 1864 edition which is in the public domain) which he praises highly. Incidentally this shows how long a dictionary remains in circulation after its purchase. His affidavit was accepted by defendant in lieu of testimony and without cross-examination.

Funk (page 362) is a publisher, imbued with a prejudice in favor of publishers'. He evidently believes that publishers ought to enjoy exclusive rights beyond the copyright period. He admits that the 1828, 1847 and 1864 editions (all in the public domain, the first two being Webster's work, only, and the last containing his definitions of standard words), built up the Webster reputation (fol. 1453).

Putnam (page 390), a publisher, is imbued with the publisher's prejudices, but admits that, in a mail order establishment, an order for the best 50 cent Webster's Dictionary, would be properly filled, in the opinion of those people, by any Webster's dictionary selling for 50 cents (fols. 1573, 1574).

Van Dyck, a former employe of publishing firms, now an editor, thinks the 1864 edition has the highest repute (fol. 1335).

Adams and Haymarket, sales agents of complainant's (pages 491 and 368), *Buddecke* (page 258), *Gifford* (p. 239), *Porter* (p. 420) and *Robinson* (p. 407), loyal salesmen and employees of complainant, express opinions, regarding what ideas reside in the public mind, of a kind favorable to their employer. They made a few unwary admissions, however, such as that of Porter, that all of the general public know Merriam's *by name*, as the publishers of Webster's dictionaries (fol. 1681); Buddecke's naive complaint that persons who bought defendant's book, even when told that it was not published by the original publisher, still considered that defendant's book was "genuine" and could not be argued out of it (fol. 1068) is significant; Gifford testifies that he has found Webster's dictionaries other than complainant's, used in schools (fol. 976), etc.

Defendant's Witnesses:

Little, member of the New York City Board of Education. Name "Webster's" in a dictionary not connected with any particular publisher, there being many on the market (fols. 6754-6759).

Hesslein (fol. 4020), *Pfansteil* (fols. 4066-4078), *Schultz* (fols. 5214, 5215, 5221-5228), *McKnight* (fols. 5681-5689, 5694, 5712), *Sherwood* (fols. 4828, 4830, 4832-4835, 4847), *Doran* (fols. 4772, 4773, 4778, 4779), and *Eckle* (fols. 5581, 5583, 5591), all disinterested witnesses, retail salesmen of long experience in Webster's dictionaries published by the Merriams and various other purchasers, testify that the average buyer has no preference for one publisher rather than another, when the various Webster's dictionaries of the various publishers are displayed to him, side by side.

B.

EVIDENCE OF "ORDINARY PURCHASERS."

It should be borne in mind that complainant has been litigating the "Webster" question for over twenty years, and that its agents and salesmen all over the country have been engaged in collecting evidence to support its claims, under the guidance of zealous counsel.

During that period millions of dictionaries entitled "Webster's" have been sold by complainant's competitors. This defendant alone sold 500,000 or 600,000 "Webster's" dictionaries.

Therefore, the alleged "deceived purchasers," whose testimony is produced in this case, must be nearly all who exist, and their testimony must be the strongest which it was possible for complainant to produce in support of its claims, and to sustain its heavy burden of proof.

Of the twenty-four purchasers of Webster's dictionaries produced by complainant as witnesses twenty-two were purchasers of defendant's dictionary, one (fol. 729) of the Saalfeld book and one (fol. 1551) of some other publisher's book.

Seven were from Springfield, complainant's home ; nine from Brooklyn ; three from Buffalo ; four from New York ; and one from St. Louis—scarcely a representative group geographically, when the burden of proof is on the complainant to negative the strong presumption that " Webster's " means to average purchasers throughout the United States what it originally implied and naturally signifies.

Two, Neuchterlein (fols. 1778-1798) and Haggarty (fol. 1766), testified specifically that they were not deceived.

With the exception of two none negated the presumption that " Webster's " as the title of a dictionary meant to him what it naturally signifies, namely, a dictionary *by* Webster. On the contrary, eleven who were asked the question directly testified that Webster's in the title of a dictionary meant to them Webster's work revised and brought up to date, viz. : Gash (fols. 1095, 1096), Foley (fol. 1124), Lutz (fols. 1200-1202), Burlingham (fols. 1269, 1270), Catherine (fols. 1396-1398), Gelhart (fols. 1408, 1409), Smack (fols. 1440-1444), Fisher (fols. 1753-1756), Wells (fols. 1670, 1671), Hughes (fol. 1296), and Seybel (fol. 997).

All of the foregoing witnesses negated the suggestion that " Webster's " might imply a publisher. Gash (fols. 1102, 1103), Catherine (fol. 1396), Fisher (fol. 1751), Hughes (fol. 1300), Smack (fol. 1444), Wells (fol. 1671), Burlingham (fols. 1269, 1270).

Nine of the twenty-four, namely, Boynton (fol. 729), Cowles (fol. 405), Clark (fol. 750), Crossman (fol. 820), Haggarty (fol. 1766), Kronvall (fol. 840), Pulsifer (fol. 832), Rogers (fol. 782), and Seybel (fol. 997), knew the Merriams by name as publishers. Their reason for supposing it was a Merriam book was, first, that they were ignorant of the fact that there were other publishers of Webster's dictionaries beside the Merriams ; and, second, they never examined the book. Had they examined the book they would, of course, have seen that the Merriams were not the publishers of it.

Two, only, out of the entire 24, namely, Cowles and Clark, testified that " Webster's " in the title of a dictionary meant to them not Webster's work, but dictionaries published by the Merriams only. Both of them live in Springfield, the home of the complainant, and one of them, Clark, a personal friend of

the officers of the complainant, exhibits his prejudice by the following exaggerated statement :

" Q. If anybody else than the Merriam Company should publish a reprint of a dictionary which they had published, would you or not consider that a genuine ' Webster ' ? A. I would not " (fols. 768, 769).

Analysis of the Testimony of Complainant's Alleged "Average Buyers."

1. *Boynton*, Springfield. Knew Merriams by name (fol. 729). Bought " Webster's Inter-Collegiate Dictionary," which is not defendant's book. As soon as he saw the title page with publisher's name he was undeceived (fol. 740). His question when he bought, " Is it published by the G. & C. Merriam Co. ? " (fol. 727) shows name " Webster's " didn't mean to him that they were necessarily the publishers. Careless purchaser.

2. *Cowles*, Springfield (fol. 403). Knew Merriam by name as publishers (fol. 405). Didn't examine book when he bought it (fol. 709). Careless purchaser. Didn't know others published Webster's dictionaries (fol. 420) but defines a " genuine " Webster as a book published by Merriams, whether based on Noah Webster or not. He evidently does not mean this, however ; for, after knowing that defendant's book is not published by the Merriams, he says that he doesn't know whether it is or is not " genuine " (fol. 412). This witness and next are the only two who support complainant's claim. He is a violent partisan of the complainant (fol. 417).

3. *Geo. J. Clark*, Springfield (fol. 748). Knew Merriams as publishers by name (fol. 750), personal friend of officers (fol. 772). Didn't examine book (fol. 752). As soon as he saw Syndicate Publishing Company's name he was undeceived. Careless purchaser. Thinks a book would be " genuine " Webster if Merriam, even though none of Noah Webster's work was in the book (fol. 752). Extent of prejudice shown as follows :

" Q. If anybody else than the Merriam Company should publish a reprint of a dictionary which they had published, would you or not consider that a genuine ' Webster ? ' A. I would not " (fols. 768, 769).

Witness's glib echo of his attorney's reference to " the genuine series of Webster's dictionaries " shows careful coaching (fol. 760).

4. *Crossman*, Springfield. Age 53 (fol. 808). Knew Merriams by name as publishers since 1877 (fol. 820). Ignorant of the fact that there were other publishers (fols. 813, 814). Didn't examine book carefully enough even to know the title (fols. 810, 811). Careless buyer. Thought it was a Merriam book because a Springfield paper offered it (fols. 811, 812). He supposed it was a Merriam book because the Webster's dictionary he had at home was published by that firm (fol. 813).

5. *Catherine*, Brooklyn. Age 45. His testimony helps the defendant. Knew Webster's Dictionary when a boy (fols. 1385, 1386). (Evidently 1864 edition). Didn't know the name of publishers of Webster's or that there was more than one (fol. 1390). Name " Webster's " means to witness name of a standard work, and is not connected in his mind with any particular publisher. He didn't think of publisher (fol. 1396). After being fully informed that complainant was *not* the publisher of defendant's book, he testified :

" Q. Do you know whether or not the book which you bought is a genuine Webster's Dictionary ?

A. No, sir " (fol. 1392) ;

showing that a " genuine " Webster meant to him *not* a book published by complainant, but a book containing Noah Webster's work. This is made certain by the following :

" (BY MR. HALE) :

" Q. When you bought this book did you expect to get a dictionary written by Noah Webster himself ? A. Yes, sir " (fol. 1397).

6. *Condit*, New York. His affidavit read by consent in lieu of oral testimony. On receipt of a leaflet from

the Saalfeld Company of Akron, Ohio, advertising their Webster's Imperial Dictionary he wrote to Merriams supposing Saalfeld had relations with it (fols. 1551, 1554). We know Saalfeld advertisements had fraudulent features which tended to create the belief that it was connected with the Merriams. Testimony of deception caused by their book or advertisements is obviously not relevant.

7. *Foley*, Brooklyn. His testimony helps the defendant. Went to school in '85, and then knew reputation of Webster's (fol. 1112), so evidently '64 edition.

Didn't know Merriam's by name (fol. 1114). Read cautionary notice after he bought book (fols. 1117, 1118). That did not convey idea that book was not "genuine." After knowing that defendant's book is not published by the original publisher or the complainant, witness says he does not know, even now, whether this is a "genuine" Webster's dictionary. So a "gennine" "Webster's" dictionary didn't mean to witness a particular publisher, but merely a particular kind of literary product. "Webster" means a standard book, containing good definitions and spelling (fol. 1122). Hale told him that defendant's book "was not a copy of the original Webster" (fol. 1123). Witness is not interested as to who is publisher (fol. 1124). If he asked for a Webster and got a reprint of the '47 edition "brought up to date by annexes" he would consider his order filled (fols. 1129, 1130).

Entirely satisfied with his bargain after being fully informed that Merriams were not and that the defendant was publisher.

Mr. Hale's activities in prejudicing witnesses illustrated (fols. 1123, 1142, 1143).

8. *Edith Fisher*, Buffalo. Her testimony helps defendant. Didn't know there was more than one publisher (1738). To her the author is the important consideration (fol. 1740). "I didn't think anything about the publisher at all" (fol. 1741).

Understands by a "Webster" a book "written by Webster" (fol. 1753).

"Q. Then, don't you mean by the term 'Webster's Dictionary' which you expect to buy to-day a dictionary based upon the original dictionary written by Noah Webster? A. In a sense it would have to be more than 'based' on it" (fols. 1754, 1755).

She explains that she means by this it must contain more of Webster's work than the word "based" implies (fol. 1757).

9. *Gash*, Brooklyn. His testimony helps the defendant. "Webster's" means a standard dictionary (fol. 1085); doesn't know who published the one he used at school in 1885; it was a small book (fols. 1090, 1096, 1099); so probably published by American Book Company, or Laird & Lee.

"Q. So that if the contents of the dictionary which you bought are, as a matter of fact, taken from and based on the original unabridged dictionary which was edited and compiled by Noah Webster you would be satisfied that it was the dictionary that it claimed to be.

"A. Yes" (fols. 1095, 1096).

And further :

"Q. You bought a Webster's Dictionary because you thought that the rules of spelling laid down by Noah Webster and the definitions given in his original dictionary were correct, is that true?

"A. Yes.

"Q. And you didn't care who the publisher was as long as it met those qualifications?

"A. As long as it met those other qualifications" (fols. 1102, 1103).

This witness's testimony fully sustains the proposition that "Webster's" continues to mean simply Webster's.

10. *Gelhart*, Brooklyn. His testimony helps the defendant. Webster's meant to witness a well known kind of literary product (fol. 1405). Didn't know any publishers by name (1406), and "Webster's" did not mean any particular publisher (1408).

"Q. Does the name 'Webster's' in a dictionary indicate anything more to you than that the contents of that dictionary were originally prepared by some author known as Webster, and are to be considered reliable contents?

"A. I anticipated that I was buying a dictionary by Noah Webster.

" Q. Have you any reason to believe that you did not get a dictionary by Noah Webster ?

" A. I cannot say that I have " (fols. 1408, 1409).

11. *Hughes*, Brooklyn. Age, 49. Webster's means merely a standard authority (1311). Supposed the book he bought (defendant's) was an abridgement of the original Noah Webster's dictionary (fols. 1288, 1296).

And at fols. 1199, 1200, 1201 and 1202 :

" Q. Does the expression ' Webster's Dictionary,' mean to your mind a dictionary containing the Websterian spelling and Websterian definitions by whatever publisher published ? A. I believe that any book called a Webster Dictionary must be connected and based upon Webster's original definitions.

" Q. If you were offered then a dictionary containing the same literary matter with its spelling and definitions based upon the original unabridged dictionary edited and compiled by Noah Webster, would it matter to you who published it ? A. If this book was a reliable edition of the Webster Dictionary, which I knew to be the best authority, regardless of who published it, it would not matter to me."

Supposed only one concern published Webster's dictionaries so that the name Webster's associated in his mind with the original publishers (fol. 1289). Mr. Hale told him Merriam's were only " authorized publishers " (fol. 1302), and that defendant's book was not genuine (fol. 1305). Witness supposed book was so cheap because it was a reprint of an expired copyrighted book. This implies knowledge that it might be published by some other publisher. Very weak implication of preference for complainant as publisher, after careful coaching. When he purchased the book *he did not think about the publisher at all* (fol. 1294).

12. *Hagarty*, Buffalo. This witness helps defendant. Knew Merriam's by name. Admits that careless reading of the advertisement caused witness to infer for a moment she was getting a Merriam Webster (fol. 1766). When she saw the name " Syndicate Publishing Co." on the title page, she knew it was not the Merriam's book (fol. 1770).

13. *Kronvall*, Springfield. Knew Merriam Co. and supposed it was sole publisher of Webster's work (fol. 840). Considered Webster's meant a standard authority (fol. 839). When he complained to the newspaper that he had supposed that he was getting a book published by Merriam, he received his money back (fol. 846).

14. *Lutz*, Brooklyn, helps defendant. Webster's a high authority (fol. 1185). Didn't know name of publisher of Webster's dictionary, but supposed only one existed (fols. 1188, 1189).

"A. I believe that a 'Webster' dictionary must be connected and based upon Webster's original definitions.

"Q. If you were offered then a dictionary containing the same literary matter with its spelling and definitions based upon the original dictionary edited and compiled by Noah Webster, would it matter to you who published it?

"A. If this book was a reliable edition of the Webster Dictionary, which I know to be the best authority, regardless of who published it, it would not matter to me.

"BY MR. HALE:

"Q. You spoke of Webster's original definitions. By that do you mean the definitions contained in the standard current Webster Dictionaries now in general use or the definitions contained in some dictionary published more than fifty years ago?

"A. I believe I mean by that the definitions on which all of the genuine Webster books are based" (fols. 1201, 1202, 1203).

15. *McMahon*, Brooklyn, age 42.

Webster's dictionaries have high reputation (1208). Didn't know who published Webster's (1212), but thought only one firm did (fol. 1223). Book he knew was "Webster's Unabridged" (fol. 1224), *i. e.*, '64 edition. Didn't think about publisher (fol. 1226). That the witness means Webster's product, as distinguished from the maker of the product, is clear, since after knowing all the facts about complainant's

having been the publisher of the Webster's Dictionary he was familiar with, he says that the Court must decide whether defendant's book is or is not a Webster's dictionary (fol. 1243).

16. *Neuberry*. St. Louis. Age 42. Webster's dictionary had a high reputation as an authority (1610). Webster's doesn't imply to witness any particular publisher (1612). Webster means the contents of the book, the witness implies a preference for a dictionary "either edited, revised or published by the same interests that put out the dictionary of thirty years ago" (1620), viz., the '64 edition.

"It is connected in my mind with the original Webster, and the one we learned to respect in school.

"Q. The name Webster in a dictionary suggests to you the author of the dictionary; is that correct?

"A. Well, it would be either author, compiler or the title, I don't know which. It would be just a Webster dictionary" (fols. 1616, 1617).

The dictionary he used in school (fol. 1616), probably was the American Book Company's publication. School books contain mainly, or school children use mainly, the spellings and definitions of standard words, which was all Webster's work.

17. *Neuchterlein* helps defendant. Buffalo. Age 21. He was not deceived, knew just what he was getting, and did not suppose there was any connection between the publisher of his big dictionary at home (Merriams) and defendant's book (fols. 1778, 1779, 1786, 1792, 1795, 1796, 1797, 1798). His case illustrates the questionable methods employed by complainant in procuring testimony. On the preliminary injunction the affidavit prepared for this witness contained statements which he had not made and were not true, and he signed it without reading it, supposing it contained only what he had stated (fols. 1781 to 1784).

18. *Pulsifer*. Springfield. Aged 42. Owns "Webster's International" (826). Knows Merriams by name. Didn't know there were other publishers (832, 833), so supposed defendant's book was Merriam book. He could not have examined title page, which showed defendant as publisher. Careless publisher.

19. *Rogers*, Springfield. Aged 61. Webster's stands for literary fame (781). Knows Merriams by name (782). Title "Webster's" meant Merriam to him (784), though it does not appear that he was ignorant of the existence of other publishers of Webster's dictionaries. He was not cross-examined, but evidently didn't examine title page showing defendant as publisher. Careless purchaser.

20. *Seybel*, New York, client of Mr. Hale's (1010). Knows Merriams by name as publishers "of a dictionary compiled by Dr. Noah L. Webster" (997). As he considers Merriams' books the only "genuine" Webster, he evidently knows there are other publishers. That he means by a "genuine Webster" a book containing Dr. Webster's work and not a publishing house appears from the above and from the fact that, after finding that defendant's book was not published by the Merriams, he didn't know whether it was or was not "a genuine Webster dictionary" (fols. 1001, 1002). Didn't examine book. Had he done so he would not have been deceived (1017). Careless purchaser.

21. *Ida Smack*, Brooklyn. Helps defendant. Knew Webster's dictionary in school (1415), so evidently American Book Co. publication. Webster's means an authority (1415, 1416). Didn't know that more than one concern published Webster's dictionaries (1420).

"Q. Does the name "Webster's" in the title suggest to you the author or the publisher?

"A. Why, the author.

"Q. Did you think about the publisher at all when you purchased the book?

"A. No, I did not (fols. 1443, 1444).

"Q. As between two dictionaries, one of which contains little of that man Webster's work, and another which contains a great deal of that man Webster's work, which would you consider more closely met your requirements of a real Webster's Dictionary?

"A. I would consider that the one that contained a great deal of that man Webster's work to suit my requirements, as I have occasion to look at the book quite often" (fol. 1442).

22. *Times*, Brooklyn, age 45. Knew Webster's dictionary 25 years, but nothing shows who was the publisher of the Webster dictionary he knew. Has no reason to suppose defendant's book is not a "Webster's" dictionary except that Mr. Hale told him it was not a "genuine Webster's dictionary" (1370, 1371). Term "Webster's" dictionary means to witness correct definitions and spelling and he is not interested in the publisher (1374-1376).

23. *Miss Halla Wells*. Helps defendant. Iroquis, N. Y. Regarded "Webster's" dictionary as an authority. Name meant contents of the book (1664-1668). Meant the book she used in her school. Doesn't appear who was the publisher of the Webster's dictionary she knew. Probably American Book Company, or Laird & Lee. Didn't know there was more than one publisher (1667).

"Q. Does not Webster's Dictionary really mean to you a book originally compiled by Noah Webster and brought up to date?

"A. Yes (fol. 1670).

"Q. Is it connected in your mind with any particular publisher?

"A. No.

"Q. You buy the books, then, on the reputation of the original compiler, Noah Webster?

"A. Yes" (fol. 1671).

24. *Miss Burlingham*, New York. Her testimony helps the defendant. "Webster's" means a reliable book (fol. 1248). The effort of counsel unsuccessfully to lead the witness to testify to knowledge of "a series" of Webster dictionaries is enlightening. The witness's reply was, "What do you mean by a series?" (fol. 1254). Witness did not know that there was more than one publisher (fol. 1254).

"Q. Do you understand anything more by the term Webster's Dictionary than a dictionary based upon the unabridged dictionary of the English language of Noah Webster, LL.D. revised and brought up to date in accordance with the most recent eminent English and American authorities?

"A. No" (fols. 1269, 1270).

Defendant's Ordinary Purchasers.

Defendant caused a disinterested canvass of 1230 ordinary persons in twenty cities and towns to be made and the canvassers faithfully reported every answer given, whether favorable or unfavorable.

It shows clearly and overwhelmingly that to the ordinary purchaser, "Webster's" dictionary is a product which he supposes that any publisher may publish and "Webster's" is absolutely disassociated from the idea of origin or ownership.

Defendant sent out five investigators with instructions to examine persons at random without indicating in any way the purpose of the examination, and to write down the result of the examination in each instance immediately after the various interviews. The instructions which were given to these investigators are best set forth in the letter of instructions which was sent to each one before starting out on his work. These letters were in the form found at page 1301 of the Record.

Luther M. Rankin (pp. 1024-1046) examined 101 "average purchasers" in the City of New York. He asked them the following questions :

1. Do you know who is the publisher or who are the publishers of Webster's Dictionaries ?

2. When you hear or see the name " Webster's Dictionary " on a dictionary, does it indicate to you a dictionary published by any particular house or at any particular place ?

3. Do you know any city or cities where any Webster's Dictionaries are published ?

91% answered question 1 in the negative.

Of the remainder, 4 individuals mentioned Funk & Wagnalls.

3 mentioned Merriam.

1 " Syndicate.

1 " Appleton's.

1 " Lippincott.

1 " Collier.

1 " Trow City Directory.

1 " American News Company.

1 " American Book Company.

97% answered question 2 in the negative.

Of the remainder

2 answered question 2. Merriam.

1 " " " Syndicate.

82% answered question 3, in the negative.

Of the remainder

1 answered question 3. Springfield.

14 " " " New York.

2 " " " Philadelphia.

1 " " " Chicago.

Herman Schultz (pp. 1297-1395) examined 316 "average purchasers" in Wilmington, Delaware, Philadelphia, Pa., Trenton, Morristown, Jersey City, Newark and New Brunswick, New Jersey and Brooklyn, New York. He asked in each case the following questions :

" Q. 1. Do you know who is the publisher or who are the publishers of Webster's dictionaries ? "

" Q. 2. When you hear or see the name 'Webster' on a dictionary does it indicate to you a dictionary gotten out by any particular publisher or at any particular place ? "

" Q. 3. Do you know any city or cities where any Webster's dictionaries are published ? "

" Q. 4. Do you know of any series of succeeding rewritings of Webster's dictionaries gotten out by any one publisher ? "

" Q. 5. Who do you think wrote the definitions and fixed the spellings of the words to be found in the Webster's dictionaries which you have known about ? "

" Q. 6. When do you think those definitions were written and that spelling fixed ? "

95% answered question 1 in the negative.

Of the remainder

6 individuals answered Funk & Wagnalls.

1 individual " Lippincott.

1 " " Appleton.

8 individuals " Merriam.

Of the 8 who answered " Merriam "

6 individuals indicated by their answers to other questions that Webster was the author.

7 indicated by their answers to other questions that they thought Webster had written the definitions from forty to one hundred years ago.

5 said that since anyone could publish the dictionary the name "Webster" was not connected in their minds with Merriam or any other publisher.

96% answered question 2 in the negative.

87% answered question 3 in the negative.

97.5% answered question 4 in the negative.

84% of those who ventured any affirmative answer to question 5 indicated that Webster in the title of a dictionary was connected in their minds with the work of Noah Webster.

96% of those who ventured any affirmative answer to question 6 showed by their answers that they regarded Webster's dictionary as an old book.

Thomas I. Skeoch (pp. 1229-1239) examined 340 persons in Boston, Massachusetts. These persons at or about the time of the examination purchased a Webster dictionary from defendant through the Boston Herald (fol. 4928). He asked the same six questions as those set forth above.

100% answered question 1 in the negative.

95% " " 2 in the negative.

95% " " 3 in the negative.

100% " " 4 in the negative.

The great majority answered question 5 by the name "Webster" or "Noah Webster."

The persons examined by Mr. Skeoch answered question 6 in the negative (fol. 4941).

August E. Eckle (pp. 1395-1420) examined 175 persons in Bridgeport, Danbury, Meriden, New Britain, Waterbury and New London, Conn.

He asked the same six questions as are set forth above.

90% answered question 1 in the negative.

Only one answered "Merriam" to question 1.

One individual answered question 1 "Syndicate Publishing Company."

90% answered question 2 in the negative (fol. 5675).

The great majority answered question 3 in the negative.

The rest answered New York, Hartford, Philadelphia, Lancaster and only one Springfield.

100% answered question 4 in the negative.

"The general run" answered question 5 Webster.

The great majority answered question 6 "a long time ago" (fol. 5634).

William M. Gray (pp. 1432-1434) examined 297 persons in Pittsburgh, Pa., Cincinnati, Ohio, Louisville, Ky., and Milwaukee, Wisconsin (fol. 5740). He asked the same six questions as those set forth above.

99% answered question 1 in the negative.

4% answered question 1 Webster.

2% answered question 1 Merriam.

86% answered question 2 in the negative.

87% answered question 3 in the negative.

96% answered question 4 in the negative.

83% of those who ventured an affirmative answer to question 5 indicated that Webster in the title of a dictionary signified the work of Noah or Daniel Webster.

78% of those who ventured an affirmative reply to question 6 indicated by their answers that they thought the definitions, etc., were written a long time ago.

History of Defendant's Publication.

On the 3d day of November, 1904, Louis Klopsch, proprietor of the *Christian Herald*, of New York, N. Y., registered for copyright, in the Copyright Office of the United States, at Washington, D. C. :

"The Crown Dictionary of the English Language, based upon the unabridged dictionary of Noah Webster, LL.D., and revised and brought up to date in accordance with the most eminent English and American authorities" (fol. 649).

At or about that time this book had been prepared and sold to said Louis Klopsch by E. T. Roe of Chicago (fol. 2453).

In the month of July, 1908, the defendant purchased from said Louis Klopsch the plates, copyright and other property connected with said book (fol. 4245). Mr. Wright, President of the Syndicate Publishing Company, who acted for the defendant, expected to publish the book under the name of "Webster," and bought the plates, copyright, etc., only when Mr. Klopsch assured him that the statement upon the title page and in the copyright, namely, that the book was based upon the unabridged dictionary of Noah Webster, was correct (fol. 4382).

After purchasing the book, the defendant inserted a number

of full-page colored and half-tone illustrations (fol. 4354) and began advertising it under the name "Webster's New Illustrated Dictionary," by means of circular letters, advertising in periodicals and advertising in weekly papers. On or about March 20, 1909, the complainant wrote to the defendant asking for a copy of defendant's Webster's New Illustrated Dictionary. Almost by return mail, defendants sent two copies of its dictionary to complainant with its compliments and an offer to give away any information about the books which complainant might desire. Complainant replied by letter dated March 23, 1909, in which it acknowledged receipt of the books and said: "The body of the book looks suspiciously like a book formerly issued by another concern and which, by the way, is in one of our suits; but, of course, we would be wrong in supposing such to be the case. The cuts you have inserted add greatly to the appearance of the book" (fol. 4265).

In its letter, dated March 24, 1909, responding to complainant, defendant said that complainant's suggestion that defendant's book was formerly published by another concern and had been involved in litigation was a great surprise. He wrote, "The book is having a very excellent sale both to the trade and to newspapers who are using it quite largely as a premium." "We would like to know where we stand." We "would be under a great obligation to you for any information that would tend to show we have been dealt with unfairly," by the people who sold us the book.

After a week's delay, complainant answered this letter by one, dated April 2, 1909: "Of course you know that your so-called Webster's New Illustrated Dictionary has been published under a variety of names, and when we wrote, on March 23, we were under the impression that the book under one of its names was included in one of the suits, but we cannot easily verify this and we may be mistaken.

"We shall doubtless have occasion to write you again about your book, but we shall ask nothing but what is proper and reasonable under the court decisions, and you will of course expect to grant no less."

During the remainder of the year 1909 and during the year 1910 no further communication of any kind was received from the complainant. Naturally assuming that complainant had satisfied whatever doubts it may have had (Fol. 4274), defend-

ant continued to sell its dictionary to the book stores, to premium houses and by means of advertisements in weekly and monthly periodicals. At this time defendant's book was listed at \$2.50. Dealers in the book had a right to sell it at whatever price they chose, "but as a rule they sold at the list price" (Fol. 4434).

From time to time during this period defendant caused certain revisions to be made. "In the first edition the revision consisted chiefly of the insertion of new and important words, together with the additions of illustrations, full-page, half tone, two color charts and colored plates" (Fol. 4354). It was customary to make additional changes, consisting of the insertion of new words with "pretty nearly every edition" (Fol. 4357). Prof. Charles Morris, of Philadelphia, Charles Leonard Stuart, of New York, and, to a smaller extent, Dr. Harry Thurston Peck, directed these revisions. They continued until the winter of 1911-12; then the plates were discarded (Fol. 4366).

The year 1910 having passed without further event, the Syndicate Publishing Company adopted in January, 1911, a new plan for the marketing of its books. "By the insertion of full pages and fractional pages of display advertising, in conjunction with coupons and reading notices, in various newspapers in cities and towns of the United States and Canada during a period of from four to six months in each newspaper," defendant succeeded in disposing of large quantities of its dictionaries (fol. 4330). The sales before that time had been "immaterial." When the newspaper distribution plan began the sales became very much larger (fol. 4587).

The keynote of the new plan was its appeal to the newspapers as a means of increasing their circulation. To accomplish this end, innumerable methods of great ingenuity were and are adopted by the circulation departments of newspapers all over the country. The proposition perfected by the defendant and offered to the newspapers was one of the most successful circulation booming and publicity producing schemes which the country has ever known. By means of defendant's plan the "Pittsburg Post" increased its circulation in a few months more than 25 per cent. The essential features of the plan were these: Advertising in its own name, each newspaper featured by full-page display advertisements and by

reading notice a great educational "Presentation." For the purpose of increasing the percentage of accurate knowledge in the community and as an example of the generous public spirit of the editors they offered to "present" to any person in the community who evidenced his interest in the paper by the collection of six coupons from successive editions a copy of a "splendid up-to-date dictionary" usually called by the name of the newspaper itself, for example, "The Post's Dictionary" or "The Herald's Dictionary." The only money required in addition to the coupons was the nominal sum of 98 cents which covered various expense items in connection with the distribution. As the witness Nolan testified, the newspapers were working first, last and all the time for an increase of their own prestige (fol. 7392) as benefactors of the public and relied upon this increase of prestige to increase their circulation. They were advertising themselves, not the dictionaries, and consequently devoted an enormously greater amount of space to their circulation plan than the Syndicate Publishing Company or any other publishing company could have afforded to buy; furthermore, the reading notices always placed in a news section and usually on the front page of the paper gave point to the whole distribution and were of invaluable assistance in the sale of the dictionaries. Some three to four hundred of the newspapers took up the circulation plan. The Syndicate Publishing Company induced them to adopt it by means of the following arguments :

FIRST : "Everybody wants a handy, up-to-date dictionary for every-day use" (fol. 7476).

SECOND : The newspapers would take no risk about the dictionaries themselves, for they would be sold on consignment, and any dictionaries not disposed of at the end of the campaign could be and were returned (fol. 7439).

THIRD : All details of the campaign were worked out by the Syndicate Publishing Company without cost to the newspaper, but subject to its approval. The newspaper thus received, free of charge, the benefit of the experience of the Syndicate Publishing Company on all earlier dictionary campaigns (fol. 7479).

FOURTH : After a few months the Syndicate Publishing

Company was able to point to successes obtained on other newspapers (fol. 7475), and so expert were the officers of the Syndicate Company in adjusting advertising to sales that in some instances (See fols. 7447, 7466, Nolan on the Springfield Union), the profit to the newspaper from the sale of the dictionaries, exclusive even of the great benefits derived from increased circulation, were sufficient to pay for the display advertising.

For many months this newspaper circulation booming program continued with great success. Space worth more than \$2,500,000 was devoted to the plan by the various newspapers. Considering each copy of each newspaper, which contained an advertisement of this dictionary, as a circular, more than 600,000,000 circulars were distributed.

Because of the vast extent of this advertising, because of its great attractiveness, because of the prestige given to each "dictionary campaign" by the newspaper back of it (fol. 7393), because defendant's books satisfied the universal demand for a neatly bound, clearly printed, complete, but easily handled, up-to-date dictionary, and especially because of the very small price asked (48 cents to 98 cents) (fols. 7396, 7456), several hundreds of thousands of these dictionaries were disposed of.

The name or identity of the publisher had absolutely nothing to do with the extent of these sales (fol. 7605). Realizing these facts, secure in its own honest and well-founded conviction that the name or identity of the publisher did not in any way influence the sales, defendant did not give any other publishers of dictionaries a thought, except where others came into the field and tried to get the benefit of the wide interest in dictionaries created by the advertising of defendant's books in the various newspapers.

Having received no communication from the G. & C. Merriam Company for more than two and a half years, defendant surely "had no idea that the Merriam Company claimed or sought to maintain that in the publication of its dictionary defendant in any way infringed complainant's rights" (fol. 4275).

On October 4, 1911, therefore, the following letter came

from the G. & C. Merriam Company like a bolt from a clear sky :

"Your advertisement and sale of a dictionary entitled 'Webster's New Standard Dictionary—Illustrated' has been called to our attention, and we desire to give you formal notice that such advertisement and sale is a plain violation of our rights as the prior and long established publishers of the well known 'Webster's' dictionaries. Your book and advertisements are well calculated to deceive the public and lead them to buy your book in the belief that it is one of our books. This is unfair competition, and we are advised by our counsel that it is actionable. The Courts have so declared, in several cases, and we have other actions pending against other like infringers upon our rights. We shall insist that our rights, as declared by the courts, be respected."

To this letter the Syndicate Publishing Company responded on October 6, 1911, calling attention to the correspondence which had taken place between the Syndicate Publishing Company and the Merriams more than two and one-half years before, and asking the Merriams to point out in what way they claimed the Syndicate Publishing Company was violating Merriam's rights (pages 1071-1074, Record). At the same time it consulted with its attorneys, read for the first time the text of the decision in the Ogilvie case, and although considering the Ogilvie case had been decided upon an erroneous assumption of facts, and furthermore, based upon a different state of facts, nevertheless (fol. 4536), to avoid any controversy they wrote to each and every one of the newspapers handling their dictionaries (fols. 4591, 4733) and asked them to insert in every announcement or advertisement a prominent statement to the effect that their dictionary was not published by the original publishers of Webster's dictionary or by their successors and gave definite and positive instructions to insert the same notice on the title pages of all dictionaries sold by them, whether bound or in process of manufacture (fols. 4313-4316). No reply having been received to the letter of October 6, sent by the Syndicate Pub-

lishing Company to the Merriams, Mr. Swift, one of the officers of the Syndicate Publishing Company, on October 15th, 1911, went to Springfield (fol. 4563), again asked the officers of the Merriam Company in what way they claimed that the Syndicate Publishing Company was infringing the Merriam rights but could obtain no answer except that if defendant wanted peace it must "quit using the name Webster" (fol. 4574). Mr. Swift told the officers of the Merriam Company at this time of the insertion of the so-called cautionary notice in all advertisements and on all title pages, but this apparently was not what the Merriam Company was seeking. Though fully aware that a cautionary notice had been inserted on title pages and in all advertisements and though fully aware that defendant would, for the sake of peace, yield any right except the right to use the name "Webster's" the Merriam Company, without further parley, filed its bill of complaint in this suit on November 8, 1911.

From the time when these cautionary notices were inserted in advertisements and on title pages down to the present day they have been continued without interruption or intermission by the Syndicate Publishing Company. It is submitted that the obvious purpose of complainant is to attempt by subjecting defendant to vexatious and expensive litigation to force defendant to abandon the name "Webster" entirely, and thus use this court of equity indirectly to obtain that which by the decree of the Ogilvie case, complainant was enjoined from even claiming, namely the exclusive right to use the name "Webster" in the title of a dictionary.

Defendant's book is honestly named Webster's New Illustrated Dictionary.

The defendant has "the same right as the Merriam Company to publish and sell a revised edition of Webster's dictionary and to use the name Webster in the title" (149 Fed., at p. 863).

Unless the name "Webster's" in the title of a dictionary has lost its natural descriptive signification as indicative of Webster's authorship, no one would deny the right of anyone to use the name Webster as part of the title of a dictionary,

the distinguishing portion of the contents of which was Webster's work. It was to indicate this precise fact that the complainant used the name Webster as part of the titles of all of its dictionaries down to the publication of the New International in 1909 (see p. 102 of brief). Moreover, Judge WALLACE said in the case of *Black vs. Ehrich*, 44 Fed., 793, that literary matter upon which a copyright has expired is public property, and anyone may use "any part of it or all of it and call it by what name he prefers. Neither the author nor proprietor of a literary work has any property in its name. It is a term of description which serves to identify the work, but any other person can with impunity adopt it and apply it to any other book" (see p. 93 of this brief).

In the preface of his 1828 dictionary Webster laid down sixteen principles which he stated were the basis of his dictionary. One of these principles was that a dictionary should contain accurate etymologies. Another was that definitions should be given in the chronological order in which they attached to the word. These two requirements Webster did not follow in his own abridgements, and they have not been followed in defendant's book. With these exceptions, however, *defendant's book follows all of Webster's sixteen canons of dictionary-making* (fol. 6210).

Defendant's dictionary moreover follows carefully the great Webster rules of spelling, namely, that words in "our," like "labour," "harbour," etc., should be spelled in "or"; that words in "re," like "centre," should be spelled "theater" and "center"; that words like "traveller" with a double "l" should be spelled "traveler" (fols. 3626, 7943). The trivial exceptions to this statement, five in number, have special reasons which are discussed below.

A large part of the introduction to the defendant's dictionary, especially that part relating to the origin and development of the English language, was drawn from Webster's introduction to his own book (fol. 6236).

Complainant's own witness Mawson said that he had minutely examined 10 pages of defendant's book selected at random, and he concluded or admitted that 45 per cent. of the book was "by actual" count "absolutely identical" with "Webster's Dictionary of 1847" (fols. 2170, 2178, 2354-6).

Dr. Peck testified that from his count of 200 out of 800

pages of defendant's dictionary, the words used in defining the titles or terms which were defined also in Webster's were 67.6 per cent. identical with the words used by Webster in defining those titles or terms (fol. 7822).

In the 200 pages counted by Dr. Peck the total number of titles is 6932. Of this number 5651 appear and are defined both in Webster's 1847 and in defendant's book. In these same 200 pages there are 1281 words defined which do not appear at all in the Webster 1847 (fol. 7947).

Assuming that the same proportion is maintained throughout the book, its entire contents may be analyzed as follows: It defines approximately 30,000 words. Of this number approximately 5,550, or about 18.5%, are new words, which were not given or defined in the 1847 Webster. The balance of 81.5%, or 24,450 words, are the only ones whose definitions could possibly be taken from Webster. 67.6% of the words used in defining this residual group of words are almost identical with the words used in the corresponding Webster's definitions:

Summarized Analysis.

	Defendant's Estimate based on count of 200 pages.	Complainant's Estimate based on count of 10 pages.
Percentage of new words not defined by Webster.....	18.5%	18.5%
Percentage of definitions revised.	26.5%	36.5%
Percentage of definitions kept practically unchanged.....	55 %	45 %
	<hr/> 100 %	<hr/> 100 %

The definitions which have been revised are mainly technical and scientific terms. Since Webster himself was not a scientific man, his definitions of these words were often incorrect; and even if they had been absolutely correct in the light of scientific learning as it had progressed in his day, they would nevertheless need great revision 80 years later to conform to new discoveries, inventions, etc. (fols. 7833-36).

The editor of defendant's book, E. T. Roe, who is one of

the editors employed by Laird & Lee in the preparation of its series of Webster's Dictionaries (fol. 2455), and who compiled "Webster's Modern Dictionary," which was awarded a gold medal and diploma at the Lewis & Clark Centennial Exposition (fol. 7322), has stated that the description which he placed on the title page of defendant's dictionary, to the effect that it was "based on the unabridged dictionary of Noah Webster, LL.D., revised and brought up to date," etc., is correct, and that a comparison of the book with the 1848 edition of Webster's Unabridged Dictionary will show that it is nearer in all essentials, including orthography, pronunciation and definitions, than are any of the so-called Webster's Dictionaries now being published by the G. & C. Merriam Company or its ally, the American Book Company (fol. 7627).

Dr. Peck, for twenty-two years a Professor at Columbia University, holder of many honorary degrees and the author of numerous works on philology and lexicography, testified as follows :

" Q. From your entire studies in connection with these two books of the defendant, and in connection with your examination of the 1828, 1847 and 1864 Webster's Dictionary, what would you say about the two books of the defendant as to whether or not they are properly called Webster's Dictionaries ? A. My opinion is that both of these books contain so large an amount of actual material taken from the Webster Dictionary of 1828, 1847 and 1864, and for the rest following so closely the scheme of the dictionary outlined by Webster himself that it is entirely proper to speak of each or both as Webster's, as the material is Webster's and the scheme is Webster's."

" Q. Do you express it as your deliberate opinion that the Webster's New Standard Dictionary of the Syndicate Publishing Company conforms to all the principles laid down by Noah Webster in his introduction, to which you have referred ? A. All, so far as is possible in a condensed dictionary as opposed to an unabridged " (fol. 6318).

" The book certainly conforms to one of Webster's most cherished views or principles that the vocabulary

should be fresh and should be new, and that it should even include words whose place in the language is still undetermined so long as they are in use." * * * "I was particularly struck by the vocabulary of the 'Webster's New Illustrated' in that it contained so many words of such recent origin" (fol. 6319).

"No person with a fair open mind could read the continual repetition" of the Webster 1847 which you find in defendant's book, "paragraph after paragraph, and page after page, without being absolutely sure that it came from the Webster's 1847" (fol. 6431). That defendant's book "came from Webster is absolutely certain in my mind. I would be willing to assert that and swear to it. It is a demonstration; it is like 2 and 2 are 4" (fol. 6434).

Defendant's books are properly termed Webster's Dictionary "because they retain, so far as Webster would himself have retained in an abridgement the principles that he set forth and that were vital." * * * In other words, "if you get the Webster feeling and you see that the thing is done in the Webster manner, you don't cavil and carp as a rule at a particular illustration you may find or definition or something, but you take the book as a whole to see whether it is constructed on the Websterian basis" (fol. 6274).

Professor Rolfe of the University of Pennsylvania, formerly connected with the faculty of Harvard and also of Cornell and President of both the American Philological Association and of the Classical Association of the United States (fol. 7955), whom Judge HAND referred to as a "concededly fair witness" (fol. 8256), said that he had spent a week in examining with very great care Dr. Peck's markings upon which defendant's estimate of percentages was based (fol. 7962) and that his conclusion was that "they were carried out with extreme conscientiousness" (fol. 7963).

On cross-examination, Professor Rolfe testified as follows :

"Q. You have stated that in your opinion you thought that, upon the whole, defendant's dictionary was properly called Webster's Dictionary. Please am-

plify that answer and state how and why you entertain that opinion? A. Well, first, because I was satisfied in my own mind that it contained at least fifty per cent. of material taken directly from Webster's Dictionary of 1847."

"Q. And that was based on your verification of Professor Peck's markings? A. Yes, that was based on that."

"Q. What else? A. And also some other things that occurred to me. Of course, we do not go absolutely hard and fast by red marks and so on, but as you work through a thing of that kind you get an impression. * * * And when I got through my impression was a little stronger than the percentages would indicate, that is, as to the propriety of the use of the term" (fols. 8059 to 8060).

It is defendant's belief and contention that the foregoing facts and opinions show ample justification for its use of the name "Webster's" as part of the title of its dictionary. None of the essential facts stated above are rebutted by complainant's testimony. In the face of these facts, all of complainant's elaborate statistics and proofs are irrelevant and immaterial. It is solely for the purpose of showing this irrelevancy and immateriality that the following discussion is entered upon.

Complainant has attacked defendant's book by means of one witness, C. O. Sylvester Mawson. This witness was an unimportant Englishman employed in a minor capacity on the editorial staff of complainant (fol. 7658). His testimony is filled with prejudiced and often extraordinarily inaccurate statements. In spite of his prejudice, however, he did not attempt to deny Dr. Peck's statement that the introductory portions of defendant's book are taken directly from Webster's; nor that defendant's book follows all the general lexicographical requirements set forth by Dr. Webster in his own preface. Mr.

Mawson advanced the following facts as arguments tending to show that defendant's book is not entitled to bear the name Webster. Solely for the sake of convenience, the order in which Mr. Mawson advanced these arguments will be followed in answering them :

FIRST. Mr. Mawson attacked defendant's book because it contained phrases marked as nouns, for example, "Adam's ale," "Improper fraction," "Magic lantern," etc. (fol. 2092). He stated that neither Webster's Dictionary of 1847 or any other edition followed that practice (fol. 2093). The fact is that this was the precise practice followed in many instances by the 1847 edition of Webster, so that Mr. Mawson either is ignorant or willfully misrepresented the fact. A long list of such words like "Star fish," "Naval officer," "Parish clock," etc., being non-hyphenated two or three word phrases given in the Webster 1847 and designated as nouns will be found at folio 7671 *et seq.*

SECOND. Mr. Mawson attacked defendant's book on the ground that 75 out of 30,000 words were spelled in what he called an English form rather than in an American form (fol. 2094).

It should be noted that complainant has departed from Noah Webster's spelling whenever it chose to do so (fol. 2250), and the editors of defendant's book are surely entitled to the same privilege.

As a further answer to this criticism by Mr. Mawson, it should be noted that defendant's book follows the three great Webster rules of spelling ; namely, that words in "our" like "labour, harbour," etc. (folio 6326 and folio 7843) should be spelled with "or," as "labor, harbor ;" that words in "re" like "theatre, centre," etc., should be spelled with "er" as "theater and center ;" that words like "traveller" with a double "l" should be spelled "traveler" with a single "l." Of the 75 words cited by Mawson the only word in "our" is "doulour" and the only words in "re" are "zaffre, ochre, maugre and accoutre." For those words Webster gives both forms, that is, both "er" and "re" (See folios 7688, 7723, 7725 and 7744), in each case, except the latter, where defendant's book gives both forms. In the words "accoutre," "ochre" and "maugre" the change to "er" is not favored because it would change the pronunciation.

Practically all of the words included in this list of Mawson's are spelled by the best authorities in the United States, as well as in England, in both ways, and it is purely a matter of individual taste which form shall be used. In many other cases, moreover, the Webster 1847 form stands alone, and is no longer if ever preferred by the best authorities. The witness Mawson was again ignorant when he stated that the form which he gives from the 1847 Webster, is the accepted American form. Many of these forms are actually rejected by such authorities as the "Standard Dictionary," the "Century Dictionary" and "Worcester," see pages 1922 to 1936.

Included in this list are words given in defendant's book in the correct French form, like "aide-de-camp, gavotte," etc. (folio 7748), but which are given in the 1847 Webster in a curious anglicized form like "aid-de-camp, gavot," etc.; also included in the list are words like "cyclopædia" (folio 7702), "banian" (folio 7692), etc., for which both defendant's book and Webster give both forms, indicating that each approves of each; also included in the list are words like "boulder" (folio 7693), "brazier" (folio 7694), etc., in each of which cases defendant's form is preferred by all English and American dictionaries except Webster, and in which Webster gives both forms; also included in the list is the word "cotillion" (folios 7945, 7699) in which the Webster 1847 spelling of "cotillon" given by Mawson as the preferred Webster form has been rejected by the editors of Merriam's latest book, "The New International." Also included in the list are words like "instil," "appal," etc. (folio 7750). These words follow the principle which Webster claimed to follow, and are given in defendant's book with one "l," that is, in the simpler form; also included in this list are words like "detector" and "abetter," which Webster through mistaken ideas as to etymology spelled "detecter" and "abettor" (folios 7746, 7755).

There remain some 13 spellings out of the 75 which do not fall within some one of the above rules. They are words like "carburetted," "glycerine," etc., which Webster spelled "carbureted" and "glycerin," which are perhaps oversights; surely matters of taste and in any event entirely trivial.

THIRD. Mr. Mawson further attacked defendant's book on

the ground of certain miscellaneous mistakes. From the amount of space devoted in Mawson's testimony and in the cross-examination of the defendant's experts to miscellaneous errors which are included in this head, it might be supposed that defendant's book was hopelessly inaccurate. The fact is, however, as will appear from the following summary, that these errors are nearly all of small importance, are very few in number, and that errors of a similar kind are found in all dictionaries.

"In the 1847 Webster, for example, they offered \$1.00 for every misprint or mistake. Caleb Cushing sent them in a list of over 40,000" (folio 6680). Some of the errors in the 1847 Webster escaped even Caleb Cushing and survived through all revisions of the 1847 edition. Some of them will be found on page 1491 of the record. Errors of a similar kind (fol. 2231) in "Webster's Condensed Dictionary," published and sold by the Merriams to-day, will be found at pages 571 to 577 of the record.

Dr. Worcester said in the preface to his dictionary that "no amount of labor, research and care can render such a work free from errors and defects" (folio 7784). In the preface of the 1883 edition of Ogilvie's Imperial Dictionary, it is stated that: "Notwithstanding the expenditure of much care and labor, it is not to be supposed that the present work can be perfect, or even free from various errors and defects."

After two months of labor Mawson was able to discover in defendant's book the following defects:

9 words given out of strict alphabetical order (fols. 2124, 2127).

6 mixed definitions (fol. 2130).

11 miscellaneous alleged errors (fol. 2136).

19 definitions alleged to be English in character (fol. 2139, *et seq.*). (It was quite Websterian to give words with definitions of English character; see, for example, long list of such definitions at pages 1942 to 1946 of the record. These words and definitions are taken from Webster 1847.)

6 cross references to words not given, and

25 words used in definitions not themselves defined.

(16 of these words are unusual; as, grass-cloth, couch-grass, after-grass, lycopodium, zygote, etc., which will be found in few if any abridged dictionaries, fol. 2157.)

FOURTH. That part of Mawson's testimony which complainant apparently lays most stress on in attempting to convince the court that defendant's book is not entitled to bear the name "Webster" is the part relating to Price's British Empire Dictionary. Mawson testified that 98 or 99 per cent. of defendant's book was identical with the British Empire Dictionary. He testified further that the British Empire Dictionary contained some 7,000 words which defendant's book did not contain, and that defendant's book contained some hundreds of new words not given in Price (fol. 2074). He testified further that some hundreds of other words were spelled in defendant's book in the so-called Webster form and spelled in the British Empire Dictionary in another form (fol. 2174 and Comp. Exhibit B. E. D. marked). All this is immaterial. If defendant's book had been shown to be 100 per cent. identical with said British Empire Dictionary this would raise no other or further question than that which is raised by the fact that defendant's book was for a time sold by Louis Klopsch under the title "Crown Dictionary." The British Empire Dictionary itself contains such a large percentage of Webster's definitions that it could with propriety have been called a "Webster's English Dictionary", and according to the testimony of the witness Mawson, defendant's book conforms more closely to the principles laid down by Webster than does the British Empire Dictionary itself. This is especially so in the spelling of words ending in "er" and "or", like "theater" and "color" as well as words like "traveler", "symbolize", etc. (fol. 2127). Defendant's book, moreover, contains an introduction taken from Webster. It is, therefore, more entitled to bear as part of its name the word "Webster" than was even the British Empire Dictionary.

FIFTH. Complainant's next assault consisted of an attempt to throw doubt upon the reliability of defendant's method of ascertaining origin by comparison and count of identities. Without showing any pages marked or giving any details, the witness Mawson testified that 70% of defendant's book was identical with Ogilvie's Imperial Dictionary. This is not astonishing, inasmuch as Ogilvie's Imperial Dictionary was itself made up from and described by its editor as based upon the "Great Unabridged Dictionary

of Noah Webster". Defendant has offered in evidence a copy of the first edition of Ogilvie's Imperial Dictionary (fol. 7814) which states upon its title page that it is "on the basis of Webster's English Dictionary" (fol. 7815), and at page 2 of the preface is the language "Webster's Dictionary, which forms the basis of the present work" (fol. 7818). Mawson's testimony was based upon the 1883 edition of Ogilvie's Imperial, which was merely an enlargement of the original Ogilvie (fol. 7820). The extraordinary identity between the 1883 Ogilvie and Webster 1847 will appear immediately upon an inspection of the two books. The definitions, for example, of the words "pneumonia" *et seq.*, are practically 100 per cent. identical. The same is true of the definitions picked at random for the words, "lash, lass, pock, pocket, pocket book, poem, poet, poetaster." The 1883 Ogilvie even goes so far as to retain unchanged most of Webster's encyclopedic quotations, and this is particularly noticeable in the definitions of the words, "lash" and "poet."

The definition of the verb transitive "lash" given by the 1847 Webster is as follows :

"1. To strike with a lash or anything pliant ; to whip or scourge.

We lash the pupil and defraud the ward—Dryden.

2. To throw up with a sudden jerk.

He falls ; and lashing up his heels, his rider throws—Dryden.

3. To beat, as with something loose ; to dash against.

And big waves lash the frightened shores—Prior.

4. To tie or bind with a rope or cord ; to secure or fasten by a string ; as, to lash anything to a mast or to a yard ; to lash a trunk on a coach.

5. To satirize ; to censure with severity ; as, to lash vice."

The definition of this word given in the 1883 edition of Ogilvie's Imperial Dictionary is exactly identical, including all literary quotations with that given above from the 1847 Webster. .

The definition of the word "poet" given by the 1847 Webster is as follows :

" 1. The author of a poem ; the inventor or maker of a metrical composition."

A poet is a maker as the word signifies ; and he who cannot make, that is, invent, hath his name for nothing. Dryden.

" 2. One skilled in making poetry or who has a particular genius for metrical composition ; one distinguished for poetic talents."

The definition of this word given in the 1883 edition of Ogilvie's Imperial Dictionary is exactly identical including the literary quotation with that given above from the 1847 Webster. The Ogilvie dictionary adds another definition "a person endowed with high imaginative powers" and also two quotations from Shakespeare and Tennyson.

If any further proof of the solid Webster foundation of Ogilvie's Imperial Dictionary were needed, it can be found in the life of John Ogilvie, given in the Dictionary of National Biography, edited by Sir Leslie Stephen, in which it is stated that "Messrs. Blackie engaged Ogilvie in 1838 to prepare an English Webster's Dictionary, the result being the Imperial Dictionary of the English language" (fol. 7810). It is an elementary maxim that things equal to the same thing are equal to each other. Since Ogilvie is based on Webster, identity between defendant's book and Ogilvie can prove nothing but basis of defendant's book in Webster.

SIXTH. Complainant continued its assault upon the reliability of defendant's method of ascertaining origin by comparison and count of identities, by offering certain pages from Cassell's English Dictionary marked to show identities between that book and defendant's book. The witness Mawson testified, basing his answer on the identities marked in the pages from Cassell, that defendant's book was 61 per cent. like Cassell (fol. 2174). He admitted on cross-examination, however, that Webster's Dictionary was an accepted authority in England (fols. 2221-2317), and that some edition of Webster had been consulted in the making of Cassell (fols. 2337 and 2342). It is not extraordinary, therefore, that there

should be identities between defendant's book and Cassell, in view of the fact that Webster was used in the preparation of each.

Mawson apparently considered that Chambers' Twentieth Century Dictionary was in the same class with Ogilvie and Cassell. He said (fol. 2174), basing his statement on certain pages offered in evidence with colored ink markings, that defendant's book was 49 per cent. identical with Chambers'. For some reason or other, Mr. Mawson again chose to misrepresent the facts. From an actual count of the words underlined by him to show similarities between defendant's book and Chambers', it appears that these words constitute only a little over 40 per cent. of the pages taken from the defendant's book (fol. 8090). Moreover, this book was written in 1901 (fol. 2316), whereas Price was written in 1899 (fol. 2308). He further admitted, with respect to this book as well as the Cassell book, that some edition of Webster's dictionary had been consulted in its making (fols. 2337, 2342). Probably Webster was less consulted in the preparation of Chambers' than in the preparation of Cassell, because the percentage of identities between defendant's book and Chambers' is so markedly less than that found between the 1909 Cassell book and defendant's dictionary.

SEVENTH. Continuing his assault upon defendant's method of proving origin, Mawson offered two large parallel-column pages containing parts of columns cut from the following dictionaries: Worcester, Annandale, Stormonth, Nuttall, Student's Standard, and Concise Oxford. Mr. Mawson failed to qualify as an expert. He, nevertheless, stated, without any authority except his own word, that "none of these dictionaries are based upon Webster's Unabridged Dictionary" (fol. 2196). The first inference which can be drawn from this is that *Ogilvie, Cassell and Chambers*, which preceded the second group, are distinguishable from the second group on the ground that they are in fact based on *Webster*. Moreover, one of the best examples of Mr. Mawson's carelessness, inaccuracy and inexpertness is found in his statement that no one of the second group is based on Webster.

It appears from the comparison of the matter taken by Mawson from Nuttall's dictionary that the definitions in the

Nuttall column on page 30 are 100 per cent. identical with the definitions for the corresponding words in "Webster, 1847" (fol. 8106), and that in the column appearing on page 31 under the name "Nuttall," with the exception of sixteen words inserted by Nuttall for the purpose of added meanings not given by Webster, the definitions are absolutely identical with the corresponding definitions in "Webster, 1847" (fol. 8108).

Annandale's Concise Dictionary is published by Blackie & Son, the same publishers as those who employed John Ogilvie to make the Imperial Dictionary. Furthermore, Annandale bears conspicuously upon its title page the words "Based on Ogilvie's Imperial Dictionary" (see title page of Complainant's Exhibit "Annandale's Concise Dictionary"). Ogilvie's Imperial Dictionary as is set forth above, was merely a revision of Webster and spoken of as an "English Webster's English Dictionary." Annandale, therefore, being based on Ogilvie, is of course, ultimately based on Webster. Nevertheless complainant's witness Mawson included "Annandale" among the six dictionaries which he alleged "are not based on Webster."

Probably Worcester in a strict sense did not base his book on Webster. Undoubtedly his principle of spelling and orthoepy were in some respects radically different from those of Webster. All of his early lexicographical training, however, was in company with Webster and his first dictionary was written in conjunction with Webster (fols. 1542, 1573), so that he fell naturally into the Webster manner of defining words. It is not to be marveled at therefore, if a large percentage of identity resulted between Worcester's definitions and Webster's definitions.

Mr. Mawson was particularly careless in counting the alleged identities (fol. 2194) between the six books named and defendant's book (fols. 8093-8101).

	Mawson's count.	Correct count.
" Worcester's.....	44%	37 %
Annandale's Concise.....	46%	44.5%
Stormonth's	39%	32.5%
Nuttall's	39%	35.5%
Student's Standard.....	32%	21.5%
Concise Oxford	28%	17.9%."

Mr. Mawson gave as the average identity between these six books and defendant's book, thirty-eight per cent. (fol. 2194). Giving him the benefit of every doubt, and assuming that his markings are correct, the actual percentage of identity between these dictionaries and defendant's dictionary is 31.5 per cent. (fol. 8103).

The matter from these six dictionaries and the alleged percentages of identity between them and defendant's book were intended to prove that there is a very large percentage of identical expression running through all dictionaries, due, first, to unavailability; second, to the use of synonyms; third, to coincidences; and, fourth, to common sources (fol. 2181). Defendant is ready to admit that if two dictionaries are taken from Webster there will be a large percentage of identity between them. *Apparently, this is the cause of a large proportion of the percentages of identity shown between the six books named and defendant's book.* Of course, the witness Mawson did not mean this. He stated erroneously it seems, that none of these books is based on Webster, and he wished to make it appear that identities between defendant's book and Webster, as well as identities between defendant's book and these other books, were due to a common source in some such ancient dictionary as Johnson or Bailey. This pretty theory is at once refuted by pointing out the falsity of the statement that none of these books is based on Webster. The fact is that only one of these books, namely, the Concise Oxford, is really an independent production. Therefore if we leave out identities due to a common source in Webster, it would appear that approximately 18 per cent. is the correct percentage of identity which can be ascribed to unavailability, coincidence and the use of synonyms.

This testimony therefore confirms defendant in its contention regarding the Websterian character, contents and origin of its book, for it appears that defendant's book is least similar to the Oxford Dictionary, which is the only absolutely new and independent dictionary—most similar to the Ogilvie Imperial which is the dictionary

most closely related to Webster—and similar to the other dictionaries in direct proportion to the closeness of their relationship to Webster.

EIGHTH. Mr. Mawson offers one page cut from Johnson with the corresponding pages from Webster, 1847, and from defendant's dictionary. Of course one page out of 1000 proves nothing. He states (fol. 2200) that between 49 and 50 per cent. of the part of defendant's dictionary, given on page 32 of his exhibit, is traceable to Johnson. A correct count of the identities marked shows them to be 39.5 per cent. instead of 50 per cent. (fol. 8160), and a cursory comparison of defendant's book with the Johnson Dictionary offered in evidence by complainant, will show that even this percentage, is many times greater than the average percentage of identity between the two books. For example, page 39 of defendant's book contains by actual count only a little over 12 per cent. of matter traceable to Johnson.

In any event, the single page offered by complainant is in no way inconsistent with an origin for defendant's book in Webster inasmuch as every word which is marked in defendant's dictionary (on page 32 of Mawson's exhibit) as being identical with Johnson, is also included in the definitions appearing on the corresponding page cut from Webster. In addition, there are a number of identities between this page of Webster and defendant's book which cannot be found in Johnson (fol. 8162). The conclusion is inevitable that whatever matter from Johnson survives in defendant's book has come to defendant's book through the channel of Webster's dictionary.

Much of Johnson was rejected by Webster, but such Johnson matter as was adopted by Webster was adopted as Webster's own. By incorporating it in his book, Webster gave said matter his approval and sanctioned the use of his own name in connection with it. After such an adoption by Webster, and especially in America where Johnson was and is comparatively unknown, this matter is clearly most appropriately called by the name of Webster.

Webster in the Courts.

1890. Merriam vs. Hollaway, 43 Fed., 459. Demurrer to a bill brought to restrain the defendant from using advertising devices which the complainant had been using; to restrain the use of the date 1890 on the title page of defendant's book, which was a reprint of the 1847 edition; to restrain the use by the defendants of the term "Webster's Dictionary," on such reprint. Demurrer overruled. The Court said, as to complainant's claim to an exclusive right in the name "Webster's," that it was "all nonsense."

No "secondary meaning" was claimed to exist.

1891. Merriam vs. Famous Co., 47 Fed., 411. On demurrer. Defendant was selling a photo-lithographed copy of the edition of 1847, under the title "Webster's Dictionary." Complainant alleged that certain persons had been induced to purchase the reprint thinking it was the same book the Merriam's were then publishing. Held, that the Merriam's had no right to exclusive use of the name Webster's; nor to an exclusive right to the form or size of the book; that as the defendants had represented by their advertisements that their edition was a copy of the book that the Merriam's had sold from \$12 to \$15, whereas it was the edition of 1847, which had been out of print for a long time, and the edition of 1864 was the only one on the market, an injunction would issue.

No secondary meaning was claimed to exist.

1892. Merriam vs. Texas Siftings Co., 49 Fed., 944. Suit to enjoin the use of date 1890 on the title page of defendant's book, a reprint of the 1847 edition; to prevent the defendant from advertising the reprint as the "latest edition, etc., old price \$8.00," and the fact that the new price of \$1 was made possible by improvements in machinery. Held that the Merriams were not entitled to an exclusive use of the name Webster's but they were entitled to an injunction against the circulation of misleading advertisements; that there was no characteristic of a trade mark in the words "Webster's Dictionary" or in the form or size of the book used by the Merriams.

No secondary meaning was claimed to exist.

NOTE. The holding that the Merriams had no exclusive right in the word Webster's was approved by the Supreme Court of the United States specifically at 163 U. S., 169, in citing the two above mentioned decisions.

1904. Merriam vs. Straus, 136 Fed., 477, before WALLACE, J. Argument of a plea. Action for unfair competition. Plea was overruled and defendants were directed to answer. Judge WALLACE said that the exhibits "suggest grave doubts whether the books sold by the defendants, notwithstanding the use of the word 'Webster's' thereon are not sufficiently distinguished from those published by the complainants to repel the charge of unfair competition. * * * It is proper, however, to say that the bill is in part an attempt to protect the literary product in dictionaries which became *publici juris* upon the expiration of the copyright. This attempt must prove futile. But there may be a commercial property in books as well as a literary property, and when a publisher has imparted to his books peculiar characteristics which enable the public to distinguish them from other books embodying the same literary property, and to recognize them as his particular product, there is no reason why the principles which interdict unfair competition in trade should not afford him protection against the copying of the characteristics by rivals. So far as the bill proceeds upon this theory it presents a meritorious case."

In this case the Merriams for the first time alleged that "Webster's" in the titles of dictionaries, had acquired a secondary meaning.

1904. Ogilvie vs. Merriam, 149 Fed., 858. Ogilvie as publisher of a thoroughly revised and much enlarged Webster's Dictionary brought suit in 1904 in Boston against the Merriam Co. to enjoin them from sending out threatening letters and circulars claiming they had the exclusive right to use of the name Webster's upon dictionaries, saying to proposed purchasers of Ogilvie's book which was sold under the name "Webster's Imperial Dictionary," that if the trade pur-

chased the book they would sue them all "along the line" (Bill, Ogilvie suit).

This suit was tried before Judge COLT. He granted an injunction forbidding the Merriams "from sending out circulars to the effect that they have an exclusive right to the use of the name Webster's in the title of a dictionary" (149 Fed., 864). In this case, the Merriams contended again, and for the fifth time, that they had an exclusive right to the name "Webster's." The remarkable thing about the suit is that Judge COLT with one hand forbade them from making the claim that they had exclusive right to the name Webster's and quoted with approval Mr. Justice MILLER's opinion (43 Fed., 450) "that the contention that complainants have any special property in 'Webster's Dictionary' is all nonsense," with the other hand he granted them a secondary meaning, for he said, in his statement of the evidence (p. 860):

(a) "The Merriam Company and its predecessors * * * acquired all the rights in Webster's Dictionary from the heirs of Noah Webster previous to 1847." (He was mistaken. The fact is they did not acquire any rights except as licensees of the Webster copyrights, and there were other licensees who enjoyed similar rights. See contracts in evidence in this suit, fol. 3200). Undoubtedly much light has been thrown on this subject since the date of Judge COLT's decision.

(b) This, viz., Webster's Dictionary, "is the generic name by which this book has always been known and described. It further appears from the evidence that from 1847 to 1889 the Merriams were the *SOLE publishers* of Webster's Dictionaries, and that in 1889 the name 'Webster,' as applied to dictionaries, had acquired a secondary meaning, and indicated to the public the dictionaries published and sold by the Merriam Company. It further appears that since the expiration of the Merriam copyright in Webster's Unabridged Dictionary in 1889, various editions of Webster's Dictionary have been published and sold by other publishers; but notwithstanding this circumstance, it is shown by a preponderance of evidence that the name 'Webster' still indicates to the public the dictionaries published and sold by the Merriam Company."

Apparently, Judge COLT did not have all of the facts before him, for, the fact is that, beyond question, instead of Merriam's being the sole publishers of Webster's dictionaries from

1847 to 1889 there were fifteen other people and probably more who published Webster's dictionaries during that time (See appendix, p. 166).

He adds: "When the word Webster's as applied to dictionaries has once become dedicated to the public it is not again subject to exclusive appropriation as a trade-mark or trade name, nor can the public be deprived of its use on the ground of unfair competition" (p. 863).

The final result of this case was an injunction for bidding the Merriams to continue to claim the sole right to the name Webster's and forbidding Ogilvie "from the use of circulars and advertisements which are misleading and deceptive," the Court specifically holding that his book, as it bore on the back of cover the words "George W. Ogilvie" and on the title page the words "George W. Ogilvie, Publisher," Ogilvie had done all which the law requires to distinguish his book from the dictionaries published by the Merriams, including Webster's International Dictionary (p. 864).

1908. The Merriams appealed the Ogilvie case to the Circuit Court of Appeals, 159 Fed., 638. Ogilvie did not appeal, and in his brief as appellee said he was entirely content with the decision of the lower court. Accordingly, it was held that under the doctrine of *Singer vs. June*, 163 U. S., 169, while the name Webster had become a public name, the right to use it must be subject to a duty similar to that defined in the *Singer* case, and on that analogy the Court held: "If the title page of the Ogilvie dictionaries had contained, for instance, the words 'Webster's Dictionary, published by George W. Ogilvie,' with other expressions correctly indicating the identity of the publication, the Merriam Company would have no just cause for complaint. But such is not the case" (p. 641). Held, further, that the designation of each dealer who is using an article upon which patent or trade-mark has expired "must be efficient and ample under the circumstances of a given situation" (p. 643).

The net result of this appeal was that the question of secondary meaning was practically overlooked, and the rule was laid down in accordance with the *Singer* case, that it was the duty of anyone publishing a Webster's dictionary, including the Merriams, to mark his particular brand of the books so that there would not be confusion.

The Merriams then filed a petition for a rehearing which was denied, and later petitioned the Supreme Court of the United States for *certiorari*, which was denied May 8, 1908 (See 190 Fed., 931).

1909. Again the Merriams appealed (170 Fed., 167), being dissatisfied because (1) the decree ordered did not correspond to the Singer case rule; (2) no accounting was ordered. The Court held, "The Merriam Co. commenced with and insisted on the proposition that it was entitled to the *exclusive use of the name Webster* (p. 171). * * * The fundamental issue raised by the Merriam Co. was its claim to the *exclusive right to the use of the word in controversy*," and the Court decided, that this claim of the Merriams' in conjunction with its threatening letters constituted a tort and debarred them from an accounting.

The Circuit Court of Appeals further directed that Ogilvie and his successors should mark their books with this notice: "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors."

The fact that the Court found that Ogilvie's acts were more misleading than it had at first considered them did not change or increase the rights of the Merriams in the name Webster. Those rights remained constant, viz., a right enjoyed by them with the rest of the world to use the public word "Webster."

The final form of the decree entered is given at 190 Fed., 931.

The situation, therefore, at the end of the Ogilvie case was that Judge COLT had granted a secondary meaning on an erroneous finding of fact which finding of fact Ogilvie was content with, and did not question on appeal; that the Merriams had been judged to be a tortfeasor for persistently claiming the sole right to the name Webster's, and an accounting of profits had been refused them, but the court considered the acts of Ogilvie sufficiently misleading to necessitate particular and unusual care on his part in making clear that his goods were his, not those of some one else.

We now turn to the third chapter in the Merriam's campaign in which, utterly disregarding these various injunctions forbidding them to claim this exclusive right, they again start out in quest of this monopoly.

1908. In December, 1908, the Merriams brought suit in the Sixth Circuit against one, Saalfeld, who had bought out Ogilvie's business, and elaborately set up their claims to the sole use of the name Webster's on the following grounds: (a) The great renown of Webster; (b) his great learning; (c) the great learning of his editors and assistants; (d) the skill and care of the Merriam Company in typesetting, printing, proof-reading, etc., so that everyone considered "that all dictionaries bearing the title Webster's Dictionary * * * were * * * published by * * * Merriam, and none other * * * and became a guarantee * * * that the same * * * had been prepared * * * by Merriam * * * and by none other * * * and was known by all people * * * as the book * * * of Merriam, and theirs exclusively" (Bill, par. 5).

This case was tried before Judge TAYLER, who found for the defendant. The hearing before Judge TAYLER was on the affidavits submitted for preliminary injunction and the record in the Ogilvie suit was stipulated into the record in this action. He held that the case was concluded by the decree in the Ogilvie case because Saalfeld was in privity with Ogilvie.

1911. An appeal was then taken by the Merriams (190 Fed., 927) and the Circuit Court of Appeals then reversed Judge TAYLER and granted an injunction against Saalfeld on the ground that he had not, as Ogilvie's successor and privy, observed the limitations laid down in the injunction entered against Ogilvie.

1912. Still the Merriams were not satisfied and in 1912 they demanded and obtained a rehearing of this case demanding an accounting, which the Circuit Court of Appeals thereafter granted to a limited extent after December, 1909 (198 Fed., 369).

The decision of the Court on this appeal lays down the principle on which the complainant is proceeding in the case at bar, namely, that the Singer case enjoins upon one selling a copyrighted article, after the franchise has expired, the duty of putting his own name on his goods, so that the public can

by reasonable inspection know whether it is getting the goods of the original maker or not. Nothing in the Singer case or in this case holds that such a person must insert a cautionary notice.

Ogilvie committed serious overt acts of unfair competition which had the result of creating confusion in the public mind. The Court of Appeals said that his purpose "was to put out such a publication and such circulars and advertisements as would lead the public into the supposition that they were buying the Webster's dictionaries as made and edited by the Merriam Publishing Company. * * * The ingenious arrangement * * * of the Ogilvie title page * * * is not fully and unmistakably overcome by printing the name 'George W. Ogilvie, etc.'"

Acts of unfair trade vary in unfairness. Some are serious enough to demand a cautionary notice, some are not. In the Singer case, the Court specifically said that the books of directions issued by the June Company for the use of the "Singer New Family Sewing Machine" which contained no cautionary notice but merely stated in addition to the name "Singer New Family, etc.," manufactured by "June Manufacturing Company," was sufficient. In the Ogilvie case, the Appeal Court enjoined Ogilvie for unfair acts. Whether it ordered a cautionary notice was a purely discretionary matter. The notice did not necessarily follow from the unfair acts.

Ogilvie's book was published about 1904. His circulars had then been published. It is evident that the cautionary notice which the Court finally ordered Ogilvie to use was intended to offset any false impression that had been created by these circulars which he had published and by the misleading character of the title page of his book.

From the foregoing review of the so-called Webster cases, these facts stand out :

(1) All of them rest on the finding of fact by Judge COLT that the Merriams were the *sole publishers of Webster's Dictionaries from 1847 to 1889*. This is absolutely false. At least fifteen other persons published Webster's dictionaries during this period, and probably sold more Webster's Dictionaries in this time than the Merriams themselves did.

(2) Neither Ogilvie nor Saalfeld contested this erroneous finding of fact nor the equally erroneous finding of "second-

ary meaning " based upon it. Indeed Ogilvie on appeal said he was entirely content with it and Saalfeld accepted with the remark that it was not a controverted fact (see *supra*, pp. 63-4).

(3) Judge COLT and the various other Courts assumed that the Merriams were the " original " publishers of Webster's Dictionaries. This also is false. The original publisher of Webster's Dictionary was Hudson & Goodwin of Hartford, Conn. (folio 2684).

(4) All these suits enjoined the Merriams from claiming any exclusive right in Webster's Dictionary.

(5) Persistence of the Merriams in continuing to make such a claim.

Opinion of Coxe, J., on Motion for a Preliminary Injunction.

Every important question presented by this motion has already been decided by the Circuit Court of Appeals of the First and Sixth Circuits.

Merriam v. Ogilvie, 159 Fed. Rep., 638 ; 170 Fed. Rep., 167.

Merriam v. Saalfeld, 190 Fed. Rep., 937.

These decisions, so far at least as this court is concerned, have established the following propositions :

FIRST. The name Webster has a two-fold signification, in that it is the generic name of the dictionary and *is also associated in the public mind with the dictionaries published and sold by the Merriam Company.*

SECOND. Upon the expiration of the copyright in 1889, the book and the name " Webster " were dedicated to the public and any person had a right to publish the dictionary thus set free under the name of " Webster."

THIRD. This name by long association with the Merriams has acquired a secondary meaning and indicates to the public that a dictionary sold under the name of " Webster " is published by the Merriams.

FOURTH. Although the defendant has a right to publish the dictionary upon which the copyright has expired under the

name of "Webster", it must indicate clearly to the public that the book is published by the Syndicate Company and not by the Merriam Company.

FIFTH. Since the expiration, in 1889, of the copyright on Webster's Unabridged Dictionary, The Syndicate Company has the same right as the Merriam Company to publish and sell that edition or a revised and enlarged edition thereof, and to use the name "Webster" in the title.

SIXTH. This right of the public cannot be taken away or abridged on any theory of a trade-mark in the name "Webster" or upon the theory that the publishing and selling by the defendant is unfair competition.

SEVENTH. There is nothing in the size and form of the defendant's books which is calculated to connect the complainant with their publication in the mind of the purchasing public.

EIGHTH. The public must not be deceived into thinking that they are buying the identical book which was produced under the copyright and it is the duty of the defendant to accompany the name "Webster" by such indications as will unmistakably inform the public that the book is put out by the defendant and not by the complainant.

NINTH. The words, "This dictionary is *not* published by the original publishers of Webster's Dictionary or by their successors" printed clearly and unmistakably upon the title page of the defendant's books, together with the publisher's name printed on the title page and also on the back of the book will give the necessary notice to the public and prevent misconception as to the origin of the defendant's dictionaries.

The foregoing propositions are, it is thought, stated with sufficient precision for the purposes of this motion and should be adopted and enforced by this court. This would be so in any case, but particularly so where the fundamental principles upon which the Ogilvie and Saalfeld judgments rest are based upon common sense and are fortified by a long line of decisions of the highest courts of this country and England.

Stated in its briefest terms, the rule laid down in the First and Sixth Circuits is this—Any man has a right to publish a copyrighted book by its generic name after the copyright has expired, but he must tell the truth about it.

I am of the opinion, therefore, that a temporary injunction should issue substantially on the lines of paragraph 2 of the

decree in the Ogilvie case, as amended by the Circuit Court of Appeals of the First Circuit.

I have read the supplementary suggestions of the defendant, giving reasons why an injunction, even as thus limited, should not issue, but I am unable to perceive any valid reason for withholding it. *Indeed, it seems for the interest of both parties that pending final hearing their rights shall be so fixed that there can be no room for further disagreement.*

Complainant Cannot Escape Responsibility for the False Representation on the Title-Cover of its "Condensed" Dictionary that that Book was its "Twentieth Century Edition," nor for the Misstatements Made in the Advertisements of the St. Louis Republic in September, 1911.

Some of the questions propounded by Mr. Hale to the witnesses indicated that an effort might be made by appellant to evade responsibility for the labelling and selling of its "Condensed" dictionary as its "Twentieth Century Edition" or for the repetition of that mendacious representation in the advertising of that book in St. Louis (see pp. 28 to 31 of our brief). If such an effort should be made, we submit the following:

The basis of our charge is that the book is very prominently entitled on its cover "Twentieth Century Edition" (See cut of the book opposite page 28 of our Brief and Exhibit offered in evidence, page 1082). The name of the G. & C. Merriam Co. appears on the title page as publisher and in the copyright notices as proprietor. The proprietor of the copyright presumably chooses the title of his book. Appellant prepared all of the plates from which the book was printed, including, presumably, the plate for printing the cover title. Nowhere in the testimony does appellant expressly or impliedly deny that it gave this false title to the book. But whether or not it gave the book that title, in the first instance, *its Secretary expressly admits that it was fully aware of the fact that its book was sold under that title (fol. 661).* It is con-

ceded that with knowledge of the deception it not only pocketed its proportion of the profits of the St. Louis campaign of 1911, *but it is continuing to-day to pocket profits resulting from the sale of the book under that false title* (Question 24, fol. 665). This fact alone should be enough to charge it with full responsibility for the title.

Responsibility for the advertisements necessarily follows; for they are mere repetitions or elaborations of the false representation in its title that the book is its "Twentieth Century Edition." The representation that the book contained "all the new words" was "up to date" or was "a genuine Twentieth Century Webster's Dictionary" are repetitions of the false statement of the title.

In the same way the statement that the book is a condensation of the "New International" is merely a statement in so many words of what necessarily was to be inferred from the title "Twentieth Century Edition"; for complainant's only twentieth century big book was its "New International." Therefore, as appellant is responsible for the false representations contained in the title, it would be responsible for advertisements which echoed that false representation, even if it did not prepare them.

It is difficult to believe that Reilly & Britton would dare publish, as they did, the assertions that the campaign was "by special arrangement with the G. & C. Merriam Company" and to represent that Company as sponsor for all that the advertisements claimed, unless it had authority to do so (see advertisements offered in evidence by defendant, all of which are in the name of the G. & C. Merriam Co. and none of which in any way mention Reilly & Britton.)

As a matter of fact, however, the attempted evasion of responsibility for the advertisements consists merely in showing that they were prepared by Reilly & Britton and in a denial by *one only* of its officers (its Secretary) that *he* saw them. Reilly & Britton, who prepared them, are described by appellant, in its authorized advertisements, as its "Selling Agents" (fol. 2646). The act of a selling agent done in the course of selling is the act of his principal. *Qui facit per alium facit per se.*

Mr. Swift testified that during his entire conversation with Mr. Knapp, the publisher of the St. Louis Republic, Mr.

Knapp always spoke of the arrangement of their contract with the Merriam people (fol. 7047), and that Mr. Murphy who handled the St. Louis Campaign for the publishers of the dictionary (fol. 7050) admitted to Mr. Swift that he was traveling for the Merriam Company (fols. 6860, 7037).

But whatever the exact relation of Reilly & Britton to complainant, the fact remains that they were jointly sharing the profits of selling a book known by complainant to be falsely labeled.

Furthermore, the attempted denial of knowledge of what advertising was being done to promote appellant's profits is an evasive one, consisting as above stated, solely in a denial by the Secretary of the company that *he* saw the advertisements. Neither the President, Vice-President nor any other officer testified that they did not see them. Undoubtedly, every step in the fierce commercial contest in St. Louis between defendant's book and complainant's book was watched and supervised by one or more of complainant's officers or agents; for complainant's profits depended on the success of that advertising, and facts were advertised which must have been furnished from headquarters, like the statement that defendant's book was printed from plates of the "Old Crown Dictionary, purchased from Dr. Klopsch," etc. (see facsimile advertisement opposite, p. 158, *supra*). The interest with which complainant was watching the St. Louis campaign appears also from the fact that in the midst of it, on October 4th, 1911, appellant set its lawyer-like letter demanding that defendant cease using the name "Webster's."

When it suits appellant's argument to treat Reilly & Britton's advertisements of this book as complainant's own advertisements it does not hesitate to do so. Thus it charges defendant with copying *its* "Uncle Sam" figure and laudatory matter in the *Boston American* (See Appellant's Brief, at p. 51). As soon as the shoe pinches, however, it casts it off, and asserts that it never wore it.

C. & G. MERRILL COMPANY

Copyright, 1911

THE SYNDICATE PUBLISHING COMPANY

Defendant

**Motion Papers on Defendant's Motion to
Dismiss the Appeal of Complaint Against**

HUGH A. BAYNE

Counsel for Defendant

C. & G. MERRILL, 1015 G Street, New York

In the Supreme Court of the United States.

G. & C. MERRIAM COMPANY,
Appellant,

AGAINST

SYNDICATE PUBLISHING COMPANY,
Appellee.

No. 217.
October Term, 1914.

And now comes Syndicate Publishing Company, the appellee above named, by Hugh A. Bayne, its counsel, and moves to dismiss, with costs, the appeal taken herein by the above named G. C. Merriam Company upon the ground that this Court has no jurisdiction of the same, and for other reasons apparent upon the face of said papers.



IN THE SUPREME COURT OF THE UNITED STATES.

G. & C. MERRIAM COMPANY, Appellant, AGAINST SYNDICATE PUBLISHING COMPANY, Appellee.	}	No. 217. October Term, 1914.
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SIR : Please take notice that upon the affidavit of **Frank E. Wright**, hereto annexed, sworn to on the 15th day of February, 1915, and upon the copy of the bill in equity in the District Court of the United States for the Southern District of New York, in the suit above entitled, and the decree of said Court upon said bill in equity, and upon the order and mandate of the Circuit Court of Appeals for the Second Circuit, upon the appeal from said decree, copies of which are hereto annexed, and upon all the papers and proceedings herein, and upon the printed brief, a copy of which is herewith served upon you, I shall, on Monday, the 8th day of March, 1915, and if motions are not then heard, at the next succeeding motion day of this Court, make and submit to the Supreme Court of the United States, at a stated term thereof, to be held in the Capitol, in the City of Washington, District of Columbia, the motion, a copy of which is hereto annexed ; and that I will also then and there move said Court for an order dismissing the appeal herein for want of jurisdiction, and for other reasons which are apparent upon the face of said papers, and that I will then and there move for such other and further relief in the premises as may be just.

New York, February 15th, 1915.

Yours, etc.,

HUGH A. BAYNE,

Of Counsel for Syndicate Publishing Company,
 Appellee.

To **W. B. HALE, Esq.,**

Of Counsel for Complainant, Appellant,
 40 Wall Street,
 New York City.



IN THE SUPREME COURT OF THE UNITED STATES.

<p style="text-align: center;">G. & C. MERRIAM COMPANY, Appellant,</p> <p style="text-align: center;">AGAINST</p> <p style="text-align: center;">SYNDICATE PUBLISHING COMPANY, Respondent.</p>	}	<p>No. 217. October Term, 1914.</p>
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<p style="text-align: center;">UNITED STATES OF AMERICA, Southern District of New York, STATE OF NEW YORK,</p>	}	ss. :
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FRANK E. WRIGHT, being duly sworn, deposes and says :
I reside in the City, County and State of New York. I am
President of Syndicate Publishing Company, which is the re-
spondent above named.

On or about the 9th day of November, 1911, a bill in
equity by the above named complainant-appellant, against
Syndicate Publishing Company, was filed in the Clerk's office
of the Circuit Court of the United States for the Southern
District of New York, a copy of said bill in equity is hereto
annexed, marked "A". On or about November 29th, 1911,
an amendment to the said bill of complaint was filed in the
Clerk's office of the Circuit Court of the United States for the
Southern District of New York. A copy of said amendment is
hereto annexed, marked "B".

Said bill (at paragraph VI thereof) alleges in substance
that the name "Webster's" has by use and association ac-
quired a secondary meaning indicating dictionaries published
by appellant.

Said bill (at paragraph VIII) alleges that

"the value of the exclusive right in your orator to
use and employ said word 'Webster's' as a whole or a
part of the title of said dictionaries, or either of them,
and to use the same in publishing, selling and adver-
tising for sale, and in marketing said dictionaries, or
either of them, exceeds, exclusive of costs, the sum of
\$50,000 * * *."

Said amendment to said bill alleges (Paragraph First thereof) that

“ the name ‘ Webster ’ has become and now is the genuine trade-mark of your orator, for its said dictionaries * * * and that your orator, and its predecessors, had the legal right to appropriate and use said word ‘ Webster’s ’ as a lawful trade-mark for its said dictionaries * * *.”

Said amendment to said bill then alleges registration by appellant, under the Acts of Congress of a number of trade-marks for dictionaries consisting in part of certain symbols and designs and names in combination with the name “ Webster’s ” and annexed thereto are copies of the certificates of registration of said alleged trade-marks.

Said bill prays (in paragraph IX. thereof) injunctive relief as follows :

“ And that said defendant, its agents, servants, attorneys, and workmen, and each and every of them be restrained and enjoined provisionally and perpetually by the order and injunction of this Honorable Court from directly or indirectly using the word ‘ Webster’s,’ either alone or in association with any other word, in connection with the publication and sale of its said dictionaries, as the name of, or as descriptive of, such dictionaries, or in any other manner without clearly distinguishing such dictionaries from the dictionaries of your orator, and especially from selling and offering for sale its said dictionaries under the name or title of ‘ Webster’s New Standard Dictionary,’ and from publishing and circulating any notices or advertisements wherein its said dictionaries are designated by a name or title in which the word Webster or Webster’s appears, either alone or in connection with other words or any other notices or advertisements in such manner and form that the natural and probable tendency and effect thereof will be to deceive and mislead the public into purchasing said dictionaries as and for the genuine dictionaries of your orator, or as and for an edition of, or the latest edition of either of the

said series of dictionaries published by your orator and its predecessors as aforesaid."

The amendment to said bill amends the foregoing prayer of relief by inserting immediately following the words "Webster's New Standard Dictionary" the following, to wit:

"And from in any manner copying, imitating, or infringing any of your orator's said registered trademarks."

An appearance and answer traversing the material allegations thereof were duly filed by the said Syndicate Publishing Company to said bill as amended. The general replication was thereafter filed by the complainant. Testimony was taken by both parties in support of the issues raised by the said answer and replication. On or about the 6th day of January, 1913, a decree was entered thereupon, after a hearing, a copy of which decree is hereto annexed marked "C." Said decree dismissed the bill of complaint upon the merits, with costs.

Subsequently thereto the said G. & C. Merriam Company duly appealed from said decree to the Circuit Court of Appeals of the United States for the Second Circuit. Said appeal duly came on to be heard. Subsequently thereto, and on or about July 2nd, 1913, the said Circuit Court of Appeals, after argument on behalf of both parties thereto, duly rendered its decision affirming the decree of said District Court, with costs. A copy of said decree is hereto annexed, marked "D."

On or about July 3, 1913, the said complainant obtained from the Honorable H. G. WARD, United States Circuit Judge, an order allowing an appeal from the order and decree of the said Circuit Court of Appeals for the Second Circuit, made and entered on the 2nd day of July, 1913. Said appeal has been docketed and is now pending on the calendar of this Court and is No. 217 on the calendar for the October Term, 1914. Its file No. is 23,795. A citation thereunder has been served upon Syndicate Publishing Company.

Syorn to before me this
17 day of February, 1915.

Frank E. Wright his
X
mark

William P. Vanhook

(W.S.) Notary Public
New York Co., No. 3971

Witness:
Thomas F. Jay

" " Reg. " 6001
Commissioner of Public Mar. 30, 1916



"A."

CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY, a Corporation,
Complainant,

vs.

SYNDICATE PUBLISHING COMPANY, a Corporation,
Defendant.

Bill of Complaint,
Eq. 8-162.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW
YORK :

G. & C. Merriam Company, a Corporation duly organized under the laws of the State of Massachusetts, brings this its bill of complaint against the Syndicate Publishing Company, a Corporation organized and existing under the laws of the State of New York, and thereupon your orator complains and says :

I.

FIRST. That your orator, the complainant, is a corporation duly organized under the laws of the State of Massachusetts, to wit, on or about the 29th day of March, 1892, and before the commission by the defendant of the acts hereinafter complained of, and is a citizen of said State of Massachusetts carrying on business as a publisher and bookseller, having its main office and place of business at Springfield, in the State of Massachusetts aforesaid, and that the defendant is a corporation organized under the laws of the State of New York, having its principal office and place of business in the Borough

of Manhattan, in the Southern District of New York, and is a citizen of New York, and a resident of said Southern District of New York.

SECOND. That prior to the year 1847 one Noah Webster was the author, proprietor and publisher of numerous books upon various subjects, among which were included several dictionaries of the English language, published respectively in or about the years 1806, 1807, 1828, 1829 and 1840, each of which was known by the name of Webster's Dictionary. That for the purpose of indicating origin and ownership of said books, said Webster caused to be plainly marked, printed or embossed upon the title page or upon the back or cover of each of said books offered for sale the word "Webster's." That in the year 1847, and for a long time prior thereto said word Webster upon the back or cover of a book or upon the title page thereof was well understood by the public to mean that said book was prepared by or under the authority and direction of said Noah Webster, and said books enjoyed a high reputation and commanded a large sale, and the right to use the word Webster thereon became a valuable property right.

THIRD. That said Noah Webster deceased in or about the year 1843, having at the time of his death in course of preparation and in an advanced state of completion a new and revised edition of the previous editions of said Webster's Dictionary. That on or about the year 1847 the firm of G. & C. Merriam, then conducting business as publishers and booksellers at the City of Springfield, in the State of Massachusetts, acquired by purchase and assignment from the executors, the heirs at law and next of kin, and the widow and children of the said Noah Webster, deceased, all the right, title and interest which said Noah Webster had in the aforesaid dictionaries, together with the good will and trade-name thereof, and said firm thereupon proceeded to complete said edition of Webster's Dictionary, employing for that purpose William G. Webster, a son, and Chauncey A. Goodrich, a son-in-law of said Noah Webster, who with numerous other editors and literary men completed said edition and said dictionary was published by said firm of G. & C. Merriam in the year 1847 under the title of "An American Dictionary of the English Language."

FOURTH. That for the purpose of indicating to the public

the author and compiler of said prior editions of said Dictionary and said prior editions' relation to and connection with said edition of the year 1847, and for the purpose of an assurance and guarantee to the public and to consumers and users of dictionaries in general that said edition of the year 1847 was prepared, proof read, printed, bound and published by or under the general supervision of said firm of G. & C. Merriam, said firm adopted as their own special trade-name for said Dictionary, aside from its formal title of "An American Dictionary of the English Language" the name "Webster's Dictionary," either with or without the word "Unabridged," and caused the same to be conspicuously embossed or marked or placed upon the outside or back of said Dictionary, or upon both.

FIFTH. That by reason of the great renown of said Noah Webster as the originator and author of the earlier editions of said Dictionary, and by reason of the great learning and care bestowed by him in preparing the same, and by reason of the great learning, skill and care of the editors and assistants in preparing and editing the later editions thereof, and by reason of the great skill and care exercised by said firm of G. & C. Merriam in preparing, type-setting, printing, proof reading, binding, publishing and advertising said Dictionary, it became well known and understood among the trade and by all booksellers, dealers in and users of Dictionaries and by the public in general, that all Dictionaries bearing the title "Webster's Dictionary," either alone or in combination with other words, were the Dictionaries so prepared and printed and published by said firm of G. & C. Merriam and none other, and the said title "Webster's Dictionary" both with and without said other words became a guarantee of the accuracy of said book and a guarantee that the same had been prepared by the said G. & C. Merriam and their said editors and assistants and by none other, and a guarantee of the correctness of said book as a Dictionary of the English language, and by said name became well known as the book so prepared by the said firm of G. & C. Merriam and by said name it was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm, and was cited as an authority in courts of law and by the public in general, and was known

by all people desiring to purchase and to use a Dictionary as the book of the said G. & C. Merriam and theirs exclusively.

SIXTH. And your orator further shows unto your Honors that subsequently the firm of G. & C. Merriam continued to print and publish said Dictionary and to sell the same by its said title "An American Dictionary of the English Language," but more commonly by their own special trade-name or title "Webster's Dictionary," either with or without the descriptive word "Unabridged," until about the year 1864, when said G. & C. Merriam caused a new and greatly enlarged and thoroughly revised edition of said dictionary to be prepared by Noah Porter, with the assistance of said William G. Webster and Chauncey A. Goodrich, and a large corps of expert editors and assistants, and thereafter the said edition of the year 1847 was entirely withdrawn from the market.

That for the purpose of indicating to the public the authors of said revision and its connection with the prior editions thereof, and said prior editors' relation to our connection with said edition of the year 1864, and for the purpose of a further assurance and guarantee to the public and to consumers and users in general, that said edition of the year 1864, was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm renewed and continued as their own special trade-name for the Dictionary of 1864, aside from its formal title, the name "Webster's Dictionary," either with or without the word "Unabridged," and caused the same to be marked or placed upon the outside or back of said Dictionary, or both, as they had previously done in the case of the earlier editions thereof and which said revision was duly copyrighted according to law.

SEVENTH. That thereafter said Dictionaries become still more widely known and highly esteemed by the trade and by the public in general by their said name of Webster's Dictionary as the literary work of said Webster and his son and son-in-law and said Noah Porter and their said assistants, and as the typography, composition, electrotyping, printing and binding of the said firm of G. & C. Merriam and after the transfer to G. & C. Merriam & Co. and your orator as herein-after set forth, as the typography, composition, electrotyping,

printing and binding of the said G. & C. Merriam & Co. or of your orator G. & C. Merriam Company respectively, and none other, by means of which the public and purchasers and users of Dictionaries had and have an assurance of the literary as well as of the typographical and mechanical quality of the goods, and of the integrity of your orator in the preparation, printing and binding of said Dictionary and of all the mechanical work employed therein.

EIGHTH. Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the said American Dictionary of the English Language of Noah Webster, and the title of which was set forth on the title page thereof as follows :

“ A Primary School Dictionary of the English Language ; Explanatory, Pronouncing and Synonymous, with an appendix containing various Useful Tables ; Mainly Abridged from the Latest Edition of the American Dictionary of Noah Webster, LL.D., by Wm. G. Webster and Wm. A. Wheeler. Illustrated with more than 200 Engravings on Wood,”

and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said “ Primary School Dictionary ” of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from its formal title of a “ Primary School Dictionary of the English Language ” the name “ Webster's Primary School Dictionary ” and cause the same to be printed or embossed upon the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by

said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's Primary School Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else and by said title or cover title or name of Webster's Primary Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's Primary School Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively.

NINTH. Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the said American Dictionary of the English Language of Noah Webster, and the title of which was set forth on the title page thereof as follows :

" A Common School Dictionary of the English Language ; Explanatory ; Pronouncing and Synonymous ; with an Appendix containing Various Useful Tables ; mainly Abridged from the latest edition of the American Dictionary of Noah Webster, LL.D., by Wm. G. Webster and Wm. A. Wheeler, Illustrated with nearly 250 Engravings on Wood,"

and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Common School Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and

added as their own special trade-name for said Dictionary aside from the formal title of a Common School Dictionary of the English Language, the name "Webster's Common School Dictionary" and caused the same to be printed and embossed upon the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became universally known, among the trade and to the public in general, by its cover or outside title of Webster's Common School Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by said G. & C. Merriam and no one else, and by said cover title or name of Webster's Common School Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's Common School Dictionary by all people desiring to purchase and sell or use such a Dictionary as a book of the said G. & C. Merriam exclusively.

TENTH. Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the Quarto Dictionary of Noah Webster, LLD., and the title of which was set forth on the title page thereof as follows:

"Academic Edition, A Dictionary of the English Language; Explanatory, Pronouncing, Etymological and Synonymous. With an Appendix containing Various Useful Tables; Mainly Abridged from the Latest Edition of the Quarto Dictionary of Noah Webster, LLD., by Wm. G. Webster and Wm. A. Wheeler. Illustrated with more than 350 Engravings on Wood,"

and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847

and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from its formal title of "A Dictionary of the English Language" the name "Webster's Academic Dictionary" and caused the same to be printed or endorsed upon the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's Academic Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said cover title or name of Webster's Academic Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's Academic Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively.

ELEVENTH. Your orator further shows to your Honors that on or about the year 1867 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the said Quarto Dictionary of the English Language of Noah Webster, LL.D., and the title of which was set forth on the title page thereof as follows :

"A Dictionary of the English Language ; Explanatory, Pronouncing, Etymological and Synonymous ; With a Copious Appendix. Mainly Abridged From the Quarto Dictionary of Noah Webster, LL.D. Revised by Chauncey A. Goodrich, DD., and Noah Porter, D.D., by Wm. A. Wheeler. Illustrated with more than 600 Engravings on Wood,"

and which was copyrighted according to the laws of the United States in the year 1867 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade name for said Dictionary aside from its formal title of a Dictionary of the English Language the name "Webster's National Pictorial Dictionary," and caused the same to be printed or embossed upon the front cover or back of said Dictionary.

That by reason of the great skill and care exercised by G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's National Pictorial Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said cover title or name of Webster's National Pictorial Dictionary the same, was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's National Pictorial Dictionary by all people desiring to purchase and sell or use such a Dictionary as the book of the said G. & C. Merriam exclusively.

TWELFTH. Your orator further shows to your Honors that on or about the year 1868 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was an abridgment from the Quarto Dictionary of the English Language of Noah Webster, LL.D., and the title of which was set forth on the title page thereof as follows :

"A High School Dictionary of the English Language; Explanatory, Pronouncing and Synonymous :

With an Appendix Containing Various Useful Tables ;
Mainly Abridged from the Latest Edition of the Quarto
Dictionary of Noah Webster, LL.D., by Wm. G.
Webster and Wm. A. Wheeler. Illustrated with more
than 300 Engravings on Wood,"

and which was copyrighted according to the laws of the United States in the year 1868 by G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said High School Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from its formal title of "A High School Dictionary of the English Language" the name Webster's High School Dictionary, and caused the same to be printed or embossed upon the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of Webster's High School Dictionary, and said cover or outside title became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said cover title or name of Webster's High School Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name Webster's High School Dictionary by all people desiring to purchase and sell or use such a dictionary as the book of the said G. & C. Merriam exclusively.

THIRTEENTH. Your orator further shows to your Honors that on or about the year 1870 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English language which was an abridgment from said American Dictionary of the Eng-

lish Language of Noah Webster, and the title of which was set forth on the title page thereof as follows :

“A Pocket Dictionary of the English Language abridged from the American edition of Noah Webster, LL. D., by William G. Webster and William A. Wheeler, illustrated with nearly 200 engravings on wood.”

and which was copyrighted according to the laws of the United States in the year 1870 by the said G. & C. Merriam.

That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and purchasers and users of Dictionaries in general that said Pocket Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted and added as their own special trade-name for said Dictionary aside from the formal title of “A Pocket Dictionary of the English Language,” the name “Webster's Pocket Dictionary” and caused the same to be printed or embossed upon the front cover or back or both of said Dictionary.

That by reason of the great skill and care exercised by the said G. & C. Merriam in preparing said book, the same became universally known among the trade and to the public in general by its cover or outside title of “Webster's Pocket Dictionary,” and said cover or outside title became a guarantee of the accuracy of said book and a guarantee that the same had been prepared by the said G. & C. Merriam and no one else, and by said outside or cover title or name of Webster's Pocket Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by the said firm with the public in general and became known by said name “Webster's Pocket Dictionary” by all people desiring to purchase and sell or use such a Dictionary as the book of said G. & C. Merriam exclusively.

FOURTEENTH. Your orator further shows unto your Honors that on or about the year 1879 said G. & C. Merriam caused

to be prepared and printed and published a certain other Dictionary of the English Language which was a new edition of the said Dictionary of 1864, and the title of which was set forth on the title page thereof as follows, to wit :

“ An American Dictionary of the English Language, by Noah Webster, LL.D., thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., LL.D., late professor in Yale College, and Noah Porter, D.D., LL.D., President of Yale College, with an appendix of useful tables to which is added a supplement of nearly 5,000 new words with their definitions, also a new pronouncing biographical Dictionary containing nearly 10,000 names of noted persons of ancient and modern times, giving their nationality, occupation and dates of their birth and death.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1879 by said G. & C. Merriam, and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers and users of Dictionaries in general that said American Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of an “ American Dictionary of the English Language ” the name “ Webster's Dictionary ” either with or without the descriptive word “ Unabridged ” and caused the same to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by said G. & C. Merriam in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Unabridged Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been pre-

pared by the said G. & C. Merriam and no one else, and by its said cover and outside title of Webster's Dictionary or Webster's Unabridged Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Dictionary or Webster's Unabridged Dictionary to all people desiring to purchase and use such a Dictionary and was cited as an authority by courts of law and Judges thereof as the Dictionary of said G. & C. Merriam exclusively.

FIFTEENTH. Your orator further shows unto your Honors that on or about the year 1882 said G. & C. Merriam caused to be prepared and printed and published a certain other Dictionary of the English Language which was a new edition of the said Dictionary of 1864, and the title of which was set forth on the title page thereof as follows, to wit :

" Subscription Edition, with Historical Supplement. An American Dictionary of the English Language, by Noah Webster, LL.D., thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., late Professor in Yale College, and Noah Porter, President of Yale College. With an appendix of useful tables, to which is added a supplement of nearly 5,000 words with their definitions, etc., also a new pronouncing Biographical Dictionary containing nearly 10,000 names of noted persons in ancient and modern times, giving their nationality, their occupation, and the dates of their birth and death. With a Historical Supplement containing a brief history of the United States, and of each State, lives of the Presidents from Washington to Arthur, with a portrait of each, and a great variety of other valuable information."

That said Dictionary was copyrighted according to the laws of the United States in the year 1882 by said G. & C. Merriam. That for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said

American Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam, said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of "An American Dictionary of English Language," the name "Webster's Dictionary" either with or without the descriptive word "Unabridged," and caused the same to be printed or embossed upon the front cover or upon the back of said Dictionaries or upon both.

That by reason of the great skill and care exercised by the said G. & C. Merriam in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary, and said outside or cover title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam exclusively and by its said cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary, the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name, Webster's Dictionary or Webster's Unabridged Dictionary by all people desiring to purchase and use such a Dictionary, and was cited as an authority by courts of law and Judges thereof as the book of the said G. & C. Merriam and of no one else.

SIXTEENTH. On information and belief, that prior to the year 1864 complainant's predecessor, the said firm of G. & C. Merriam acquired by purchase and assignment from the owners of the copyrights thereof, and from the respective publishers thereof, all the right, title and interest which said owners and publishers respectively had in and to all dictionaries theretofore published and sold under a name or names of which the words "Webster" or "Webster's" formed a part, together with the good-will and trade-name thereof. That prior to said year 1864, all rights in all then existing "Webster" dictionaries, both abridged and unabridged, became and were concentrated and vested in complainant's predecessors, said firm of G. & C. Merriam. That among the Dictionaries so acquired by complainant's said predecessor, were the following named diction-

aries, to wit, "A Primary School Dictionary," copyrighted in or about the year 1838 by Noah Webster; "A Pocket Dictionary," copyrighted in or about the year 1846 by William G. Webster; a dictionary abridged from the quarto edition of Noah Webster, copyrighted in or about the year 1847 by Chauncey A. Goodrich; "A High School Dictionary," copyrighted in or about the year 1848 by William E. Ellsworth and Henry White, executors of Noah Webster; "A New University Pronouncing Dictionary," copyrighted in or about the year 1856 by William E. Ellsworth and others, each and all of which said dictionaries had printed or embossed on the back or cover thereof the word "Webster's."

II.

FIRST. And your orator further shows that on or about the year 1882 by a partial change in and addition to the number of members of the firm of G. & C. Merriam, the firm of G. & C. Merriam & Co. was formed, which said firm of G. & C. Merriam & Co. succeeded to all the rights of the said firm of G. & C. Merriam and the firm of G. & C. Merriam assigned and transferred their said publishing business and all their rights, title, interest and good will in and to the business and property of said firm, including the exclusive right to print, publish and sell said Dictionaries and all of them, and the use of the name Webster and all other names and titles applied to said Dictionaries by said firm of G. & C. Merriam to said firm of G. & C. Merriam & Co., and which said firm of G. & C. Merriam & Co. continued to carry on business at said City of Springfield, in the State of Massachusetts, as it had been previously carried on by said firm of G. & C. Merriam, until the assignment and transfer to your orator as hereinafter set forth.

SECOND. Your orator further shows unto your Honors that on or about the year 1884 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

"A Practical Dictionary of the English Language, giving the correct spelling, pronunciation and definition of words, with an appendix containing various useful

tables chiefly derived from Webster's Unabridged Dictionary ; edited under the supervision of Noah Porter, D.D., LL.D., President of Yale College. By Dorsey Gardner. With nearly 1,500 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1884 by said G. & C. Merriam & Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Practical Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said firm of G. & C. Merriam & Co., said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of "A Practical Dictionary of the English Language" the name "Webster's Practical Dictionary" and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by the said G. & C. Merriam & Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Practical Dictionary, and said outside or cover title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam & Co., and by its said outside or cover title of Webster's Practical Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Practical Dictionary by all people desiring to purchase and use such a Dictionary as the book of the said G. & C. Merriam & Co. exclusively.

THIRD. Your orator further shows unto your Honors that on or about the year 1884 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language which was a new

edition of the said Dictionary of 1864, and the title of which was set forth on the title page thereof as follows, to wit :

“ New Edition with Supplement. An American Dictionary of the English Language. By Noah Webster, LL.D., thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., late Professor in Yale College, and Noah Porter, D.D., LL.D., President of Yale College. With an appendix of useful tables to which is added a Supplement of nearly 5,000 new words with their definitions, etc. A New Pronouncing Gazetteer of the World, containing names of over 25,000 places, also a new Pronouncing Biographical Dictionary containing nearly 10,000 names of noted persons in ancient and modern times.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1884 by the said G. & C. Merriam & Co., and that for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with the said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said American Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam & Co., said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title of “ An American Dictionary of the English Language ” the name “ Webster's Dictionary ” either with or without the descriptive word “ Unabridged,” and caused the same to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both. .

That by reason of the great skill and care exercised by the said G. & C. Merriam & Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary, and said title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam &

Co. exclusively, and by its cover or outside title of Webster's Dictionary or Webster's Unabridged Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general, and became known by said name Webster's Dictionary or Webster's Unabridged Dictionary by all people desiring to purchase and use such a Dictionary as the book of the said G. & C. Merriam & Co. exclusively.

FOURTH. Your orator further shows unto your Honors that on or about the year 1884 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

" A Condensed Dictionary of the English Language with copious etymological derivations, pronunciations, spelling and appendixes for general reference ; chiefly derived from the Unabridged Dictionary of Noah Webster, LL.D. Edited under the supervision of Noah Porter, DD., LL.D., President of Yale College. By Dorsey Gardner ; with over 1,500 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1884 by the said G. & C. Merriam & Co. and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said American Dictionary of the English Language was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam & Co. said firm also adopted as their own special trade-name for their said Dictionary aside from its formal title "A Condensed Dictionary" the name "Webster's Condensed Dictionary" and caused the same to be printed or embossed upon the front cover or upon the back or both of each of said Dictionaries and also prefixed the same to the title as their own special trade-name.

That by reason of the great skill and care exercised by the

said G. & C. Merriam & Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Condensed Dictionary, and said outside cover title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam & Co. exclusively, and by its said cover or outside title of Webster's Condensed Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Condensed Dictionary by all people desiring to purchase, sell and use such a Dictionary as the book of the said G. & C. Merriam & Co. exclusively.

FIFTH. Your orator further shows unto your Honors that on or about the year 1890 said G. & C. Merriam & Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

" Webster's International Dictionary of the English Language. Being the authentic edition of Webster's Unabridged Dictionary comprising issues of 1864, 1879 and 1884. Now thoroughly revised and enlarged under the supervision of Noah Porter, D.D. LL.D., of Yale University. With a voluminous appendix."

That said Dictionary was copyrighted according to the laws of the United States in the year 1890 by said G. & C. Merriam & Co.

That the name " Webster " was embodied in the title and printed or embossed upon the front cover and back of each of said Dictionaries in addition to the words " International Dictionary," for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1859, 1864, 1879, 1882 and 1884, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster's International Dictionary was prepared, proof read, printed, bound and published by or under the

general supervision of the said firm of G. & C. Merriam & Co. and the words "Webster's Dictionary" either with or without the word "International" became the trade-name and distinguishing mark of said Dictionary.

That by reason of the great care and skill exercised by the said G. & C. Merriam & Co. in preparing said book and placing same upon the market, the same became known to the trade and to the public in general by its cover or outside title of Webster's International Dictionary, but more commonly by the name Webster's Dictionary, said word International being used merely to distinguish said Dictionary from the earlier editions thereof, and said word Webster became a guarantee of the accuracy of said book, and a guarantee that same had been prepared by the said G. & C. Merriam & Co., exclusively, and said word Webster was used in describing said book in all printed catalogues, accounts, statements and advertisements, and in all correspondence held by said firms with the public in general, and said book became known as Webster's Dictionary or Webster's International Dictionary, by all people desiring to purchase and use such a Dictionary, and by said name was cited as an authority by courts of law and Judges thereof as the book of said G. & C. Merriam & Co. exclusively.

III.

FIRST. And your orator further shows that on or about the year 1892, your orator was duly created a corporation by and under the laws of the State of Massachusetts as hereinbefore set forth, and thereupon the said publishing business of said firm of G. & C. Merriam & Co. and the right, title, interest and good will of said firm in and to said business and property including the exclusive right to print, publish and sell said Dictionaries and all of them, and to use the name Webster and all other names and titles applied to said Dictionaries by the said firms G. & C. Merriam and G. & C. Merriam & Co. were duly assigned and transferred to and became legally vested in your orator, and your orator thereafter continued to carry on said publishing business at

said City of Springfield in the State of Massachusetts as it had previously been carried on by said G. & C. Merriam and G. & C. Merriam & Co.

SECOND. Your orator shows further unto your Honors that subsequently on or about the year 1892, your orator, said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

“ A Dictionary of the English Language ; designed for use in the Primary Schools. Abridged from Webster's International Dictionary ; 400 illustrations.”

That said Dictionary was copyrighted according to the laws of the United States in the year 1892 by said G. & C. Merriam Co., and that for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864 and 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers or users of Dictionaries in general that said Primary Dictionary was prepared, proofread, printed, bound and published by or under the general supervision of your orator, your orator also adopted as its own special trade-name for said Dictionary aside from its formal title the words “ Webster's Primary School Dictionary,” and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or back or each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by your orator in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Primary Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by your orator, the said G. & C. Merriam Co. exclusively, and by its said cover or outside title of Webster's Primary Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in

all correspondence held by said firm with the public in general and became known as Webster's Primary Dictionary by all people desiring to purchase, sell and use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

THIRD. Your orator further shows unto your Honors that on or about the year 1892 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

" A Dictionary of the English Language with an appendix containing a pronouncing vocabulary of biblical, classical, mythological, historical and geographical proper names. Abridged from Webster's International Dictionary ; 800 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1892 by your orator, said G. & C. Merriam Co. and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the year 1864 and 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster's High School Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words " Webster's High School Dictionary," and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's High School Dictionary, and said title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by your orator, the said G. & C. Merriam Co., exclusively, and by

its said cover or outside title of Webster's High School Dictionary the same was described in all catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's High School Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, said G. & C. Merriam Co. exclusively.

FOURTH. Your orator further shows unto your Honors, that on or about the year 1892 your orator, the said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, and the title of which was set forth on the title page thereof as follows, to wit :

" A dictionary of the English Language, designed for use in common schools. Abridged from Webster's International Dictionary ; 500 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1892 by your orator, said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with the said Dictionaries of the year 1847 and the year 1864 and the year 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Common School Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of your orator, your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words " Webster's Common School Dictionary," and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by your orator in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Common School Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared,

printed and published by the said G. & C. Merriam Co. exclusively, and by its said cover or outside title "Webster's Common School Dictionary" the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by your orator with the public in general and became known by said name Webster's Common School Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

FIFTH. Your orator further shows unto your Honors that on or about the year 1895 your orator caused to be prepared and printed and published a certain other Dictionary of the English Language, and the title of which was set forth on the title page thereof as follows, to wit :

"A Dictionary of the English Language, giving derivations, pronunciations, definition and synonyms of a large vocabulary of words in common use; with an appendix containing various useful tables. Abridged from Webster's International Dictionary; over 800 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1895 by your orator, and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the year 1847 and the years 1864, 1890 and 1892, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words "Webster's Academic Dictionary," and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover or upon the back of each of said Dictionaries, or upon both.

That by reason of the great skill and care exercised by the said G. & C. Merriam Co. in preparing said book, the same

became known to the trade and to the public in general by its cover or outside title of Webster's Academic Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book and a guarantee that the same had been prepared by your orator, the said G. & C. Merriam Co. exclusively, and by its said name Webster's Academic Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Academic Dictionary by all people desiring to purchase and use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

SIXTH. Your orator further shows unto your Honors that on or about the year 1896 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

"A Dictionary of the English Language giving the derivations, pronunciations, definitions and synonyms of a large vocabulary of the words in common use. With an appendix containing commercial and various other useful tables, mainly abridged from Webster's International Dictionary ; over 800 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1895 by said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with the Dictionaries previously published and sold by your orator or its predecessors and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary aside from its formal title the words "Webster's Counting House and Family Dictionary," or "Webster's Counting House Dictionary," and caused the same to be printed upon the top of the title page

and also to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great skill and care exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Counting House Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by your orator exclusively, and by its said cover or outside title of Webster's Counting House Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Counting House Dictionary by all persons desiring to purchase, sell or use such a Dictionary as the book of your orator, the said G. & C. Merriam Co. exclusively.

SEVENTH. Your orator further shows unto your Honors that on or about the year 1898 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

" A Dictionary of the English Language. Giving the derivations, pronnnciations, definitions and synonyms of a large vocabulary of the words occurring in Literature, Art, Science, and the common speech, with an Appendix containing a copious Scotch Glossary, a pronouncing vocabulary of Proper Names, and various useful tables mainly abridged from Webster's International Dictional ; over 1,000 illustrations."

That said Dictionary was copyrighted according to the laws of the United States in the year 1898 by said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with the Dictionaries previously published and sold by your orator or its predecessors and for the purpose of further assurance and guarantee to the

public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., your orator also adopted as its own special trade-name for its said Dictionary, aside from its formal title, the words Webster's Collegiate Dictionary and caused the same to be printed upon the top of the title page and also to be printed or embossed upon the front cover or upon the back of each of said Dictionaries or upon both.

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Collegiate Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and by its said cover or outside title of Webster's Collegiate Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said firm with the public in general and became known by said name Webster's Collegiate Dictionary by all people desiring to purchase, sell or use such a Dictionary as the book of your orator, the said G. & C. Merriam Co., exclusively.

EIGHTH. Your orator further shows unto your Honors that on or about the year 1900 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

"New Edition with Supplement of New Words. Webster's International Dictionary of the English Language, being the authentic Edition of Webster's Unabridged Dictionary, comprising the issues of 1864, 1879 and 1884. Thoroughly revised and much enlarged under the supervision of Noah Porter, D.D., LL.D. With a voluminous appendix to which is now added a Supplement of 25,000 words and phrases. W. T. Harris, Ph.D., LL.D., editor in chief."

That said Dictionary was copyrighted according to the laws of the United States in the year 1900, by said G. & C. Merriam Co.

That the name "Webster" was embodied in the title and printed or embossed upon the front cover and upon the back of each of said dictionaries in addition to the words "International Dictionary," for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1859, 1864, 1879, 1882, 1884, and 1890, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster's International Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of said G. & C. Merriam Co., and the words "Webster's Dictionary" either with or without the word "International" became the trade-name and distinguishing mark of said Dictionary.

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book and placing same upon the market, the same became known to the trade and to the public in general by its cover or outside title of Webster's International Dictionary, but more commonly by the name Webster's Dictionary, said word International being used merely to distinguish said Dictionary from the earlier editions thereof, and said word Webster became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and said word Webster was used in describing said book in all printed catalogues, accounts, statements, and advertisements, and in all correspondence held by said company with the public in general, and said book became known by said name Webster's Dictionary or Webster's International Dictionary, by all people desiring to purchase and use such a Dictionary, and by said name was cited as an authority by the courts of law and Judges thereof, as the book of the said G. & C. Merriam Co. exclusively.

NINTH. Your orator further shows unto your Honors that on or about the year 1900, said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dic-

tionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

"Reference History Edition. Webster's International Dictionary of the English Language. Being the Authentic edition of Webster's Unabridged Dictionary, comprising the issues of 1864, 1869 and 1884. Thoroughly revised and much enlarged under the supervision of Noah Porter, D.D., LL.D. With a voluminous appendix and reference history to which is now added a Supplement of 25,000 words and phrases. W. T. Harris, Ph.D., LL.D., Editor in Chief."

That said Dictionary was copyrighted according to the laws of the United States in the year 1900 by said G. & C. Merriam Co.

That the name "Webster" was embodied in the title and printed or embossed upon the front cover and upon the back of each of said Dictionaries in addition to the words "International Dictionary," for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1864, 1879, 1882, 1884, 1890 and 1900, and for the purpose of further assurances and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Webster's International Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., and the words "Webster's Dictionary" either with or without the word "International" became the trade-name and distinguishing mark of said Dictionary.

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book and placing same upon the market, the same became known to the trade and to the public in general by its cover or outside title of Webster's International Dictionary, but more commonly by the name Webster's Dictionary, said word International being used merely to distinguish said Dictionary from the earlier editions thereof, and said word Webster became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co.

exclusively, and said word Webster was used in describing said book in all printed catalogues, accounts, statements and advertisements, and in all correspondence held by said Company with the public in general, and said book became known by said name Webster's Dictionary or Webster's International Dictionary, by all people desiring to purchase and use such a Dictionary, and by said name was cited as an authority by courts of law and Judges thereof, as the book of the said G. & C. Merriam Co. exclusively.

TENTH. And your orator further shows that whenever the original copyright of the several dictionaries of your orator or its several predecessors was about to expire, the persons lawfully entitled to a renewal of said respective copyrights, duly renewed said several copyrights respectively, according to the Revised Statutes of the United States in such case made and provided, and thereupon duly assigned said several renewed copyrights to your orator or to such of its said predecessors as was then lawfully entitled to print, publish and sell said books respectively as the owner of the original copyright thereof.

IV.

And your orator further shows that the Dictionaries prepared and published by your orator or its predecessors, as hereinbefore set forth, comprise two separate series, viz., a series of unabridged or exhaustive Dictionaries, and a series of smaller Dictionaries abridged from the unabridged edition and designed for special uses or for use by particular classes of persons.

Said series of unabridged Dictionaries is composed of the Compendious Dictionary of the year 1806, and the successive editions of the American Dictionary published, as hereinbefore set forth, in the years 1828, 1840, 1847, 1859, 1864, 1879, 1882, 1884, 1890 and 1900. The Dictionary of each of said years (except the first) was a new and revised edition of the last preceding edition of said Dictionary and upon the publication of each of said successive editions the prior edition of said Dictionary was substantially withdrawn from the market, and thereafter the last edition of said Dictionary alone was known

among the trade and by purchasers and users of said Dictionary as Webster's Dictionary, and all previous editions of said Dictionary were supplanted and made obsolete by said successive new editions, and thereafter no copies of said earlier and obsolete editions were printed or sold by your orator or its predecessors, except to a limited extent and upon special orders calling for copies of a particular edition, and with this exception, no copies of said earlier editions could be purchased except as second-hand books, in consequence whereof the name Webster as applied to dictionaries has always been understood by the trade and by purchasers and users of said dictionaries to mean the latest edition of said dictionaries published by your orator or its predecessors.

The various dictionaries constituting said series of abridged Dictionaries published by your orator or its predecessors, as hereinbefore set forth, were revised and new editions thereof were published from time to time, whereupon the previous editions of said several Dictionaries respectively were substantially withdrawn from the market, and thereafter the latest editions of said Dictionaries alone were known among the trade and by purchasers and users of said dictionaries as Webster's Dictionaries, and all previous editions of said dictionaries were supplanted and made obsolete by said successive new editions, and thereafter no copies of said earlier and obsolete editions were printed or sold by your orator or its predecessors, and none could be purchased except as second-hand books, in consequence whereof the name Webster as applied to dictionaries has always been understood by the purchasers and users of said dictionaries to mean the latest editions of said dictionaries published by your orator or its predecessors.

Your orator further shows unto your Honors that on or about the year 1903 said G. & C. Merriam Co. caused to be prepared and printed and published a certain other Dictionary of the English Language, the title of which was set forth on the title page thereof as follows, to wit :

"An American Dictionary of the English Language by Noah Webster, LL.D. Thoroughly revised and greatly enlarged and improved by Chauncey A. Goodrich, D.D., late Professor in Yale College, and Noah Porter, D.D., LL.D., President of Yale College. With an Ap-

pendix of useful tables including recent population statistics of the World and a supplement of more than Five Thousand Words and Phrases."

That said Dictionary was copyrighted according to the laws of the United States in the year 1903 by said G. & C. Merriam Co., and for the purpose of indicating to the public the authority and source of said Dictionary and said Dictionary's relation to and connection with said Dictionaries of your orator and its predecessors, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said Dictionary was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., said Company adopted as their own special trade-name for said Dictionary aside from its formal title the words Webster's Unabridged Dictionary, and caused the same to be printed upon the top of the title page and also printed or embossed upon the front cover and upon the back of each of said Dictionaries.

That by reason of the great care and skill exercised by the said G. & C. Merriam Co. in preparing said book, the same became known to the trade and to the public in general by its cover or outside title of Webster's Unabridged Dictionary, but more commonly by the name Webster's Dictionary, said word "Unabridged" being used merely to distinguish said edition from the International edition of said Webster's Dictionary, and said cover or outside title became a guarantee of the accuracy of the said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and by the said name of Webster's Unabridged Dictionary the same was described in all printed catalogues, accounts, statements and advertisements and in all correspondence held by said Company with the public in general and became known by said name Webster's Dictionary or Webster's Unabridged Dictionary by all people desiring to purchase and use such a Dictionary as the book of the said G. & C. Merriam Co. exclusively.

That said Dictionary was a new edition of the aforesaid Dictionary of 1879 and was designed and put upon the market for the purpose of supplying the demand for a modern low-

priced genuine Webster Dictionary, and not as a new and later edition of said Webster's International Dictionary, and both said Webster's Unabridged Dictionary and said Webster's International Dictionary are now being offered for sale and sold by your orator by their said respective names or titles.

Your orator further shows unto your Honors that in or about the year 1909, said G. & C. Merriam Co. caused to be prepared, and printed and published a certain other dictionary of the English Language, and title of which was set forth on the title page thereof, as follows :

" Webster's New International Dictionary of the English Language, based on the International Dictionary of 1890 and 1900. Now completely revised in all departments, including also a Dictionary of geography, and of biography, being the latest authentic quarto edition of the Merriam Series. W. T. Harris, Ph. D., LL.D., Editor in Chief, F. Sturgis Allen, General Editor."

That said Dictionary was duly copyrighted according to the laws of the United States, in the year 1909 by said G. & C. Merriam Co.

That the name " Webster's " was embodied in the title and printed or embossed upon the front cover and back of each of said Dictionaries in addition to the words " New International Dictionary," for the purpose of indicating to the public the authority and source of said Dictionary, and said Dictionary's relation to and connection with said Dictionaries of the years 1828, 1841, 1847, 1859, 1864, 1879, 1882, 1884, 1890, and 1900, and for the purpose of further assurance and guarantee to the public and to all purchasers, sellers and users of Dictionaries in general that said " Webster's New International Dictionary " was prepared, proof read, printed, bound and published by or under the general supervision of the said G. & C. Merriam Co., and the words " Webster's Dictionary," either with or without the words " New " and " International " became and are the trade-name and distinguishing mark of said Dictionary.

That by reason of the great care and skill exercised by said G. & C. Merriam Co., in preparing said book, and placing

same upon the market, the same became known to the trade and to the public in general, by its cover or outside title of "Webster's New International Dictionary." Said words, "New International," being used merely to distinguish said Dictionary from the earlier edition thereof, and said word "Webster" became a guarantee of the accuracy of said book, and a guarantee that the same had been prepared by the said G. & C. Merriam Co. exclusively, and said word "Webster" was used in describing said book in all printed catalogues, accounts, statements and advertisements, and in all correspondence held by your orator with the public in general, and said book became known as "Webster's Dictionary" by all people desiring to purchase and use such a Dictionary, and by said name was cited as an authority by courts of law and Judges thereof as the book of G. & C. Merriam Co. exclusively.

V.

FIRST. And your orator further shows that in obtaining the necessary skill in preparing the manuscript of said Dictionaries, and in preparing the electrotype plates from which said Dictionaries have been printed, and in printing, binding and publishing and advertising said Dictionaries, said firm of G. & C. Merriam and said firm of G. & C. Merriam & Co. and your orator have expended very large sums of money, to wit, many hundreds of thousands of dollars.

That for more than fifty years last past your orator or its predecessors have continuously and without interruption had upon the market and have offered for sale and sold Dictionaries of the English Language prepared or caused to be prepared as to their literary matter by your orator or its predecessors or one of them upon principles first enunciated by said Noah Webster, and continually enlarged, expanded and amplified by educated and learned professors and editors or their assistants, and typeset, electrotyped, proof read, printed, bound and published by skilled mechanics and artisans, all under the general charge and direction and at the expense of your orator or its said predecessors or one of them, each and all of which said Dictionaries have borne the title

and have been known and described and recognized by the public as the work of your orator or its said predecessors or one of them by their said trade-name or title of Webster's Dictionaries, and that your orator and its said predecessors have at all times and under all circumstances and by all means in their power maintained, asserted and insisted upon their exclusive right to the word Webster as their special trade-name as applied to Dictionaries of the English Language.

VI.

That by reason of the long continued use by your orator and by its predecessors under whom it rightfully claims, and also by reason of the acquiescence of the public in general it has come to be understood and believed by the people and the public, especially by retail dealers and buyers and sellers of Dictionaries that all Dictionaries bearing the name of Webster's either with or in combination with other titles or names are the literary and mechanical production of your orator, and by reason thereof, and by reason of the literary and mechanical skill, industry and enterprise of the said G. & C. Merriam and the said G. & C. Merriam & Co. and of your orator and of their several and respective editors and mechanics in producing said Dictionaries as well in their literary as in their mechanical construction and in advertising and calling the attention of the public to the same, a large demand has been created for its said Dictionaries by said trade-name of Webster's Dictionaries and by which said name the same have been and now are associated in the minds of the public and of purchasers, dealers in and users of Dictionaries with that of said G. & C. Merriam or G. & C. Merriam & Co. or your orator as the makers thereof, and is the genuine trade-name of your orator or its predecessors as aforesaid, and has been for upwards of fifty years and is now recognized and acquiesced in as such by the public generally and by dealers in and users of Dictionaries as indicating to the public and to said dealers and users the origin of said Dictionaries, and that they are your orators' production and manufacture and have the superior quality of your orator for which the same has become well known and distinguished by

the public; and thereby your orator has acquired for itself a large and lucrative trade as well in the United States as also in all parts of the world where the English Language is either used or studied, from which large and increasing profits are accruing and are likely to accrue except for the wrongful acts of the defendant and others conspiring with it as hereinafter set forth.

VII.

Your orator further shows, on information and belief, that defendant, well knowing the premises, and intending to injure and defraud your orator and to deprive it of making sales of your orator's said dictionaries or some of them, and intending to impose upon and defraud the public in general, by inducing the public to believe that they were purchasing or could purchase from the defendant, dictionaries which had been prepared by or under the general supervision of said G. & C. Merriam or said G. & C. Merriam & Co., or one of them, or your orator, or its corps of authors, editors and compilers, and which had been type set, electrotyped, printed, corrected, bound and published by said firms or one of them, or by your orator, at a much less rate than your orator's uniform charge therefor, since the first day of January, 1911, and before the beginning of this suit, against the will of your orator and in defiance of its rights, has offered for sale and sold, and has offered inducements to the public to make purchases of, and to order from it dictionaries described as follows, to wit:

Dictionaries bearing both upon the title page, and upon the front cover and back thereof, or upon one of them, the title "Webster's New Standard Dictionary," in manner and form, and in imitation of the titles and words stamped or printed upon your orator's said dictionaries, and in such manner that said dictionaries resemble Dictionaries belonging to your orator's said series of Dictionaries, and might readily be mistaken therefor, or for a later and succeeding edition thereof, by purchasers and users of Dictionaries, and by the public in general, a copy of which said Dictionary is filed herewith as an exhibit, and marked, "Complainant's Exhibit, Defendant's Dictionary."

And your orator further shows that said Dictionaries of defendant are not the product, either literary or mechanical, of your orator, or of any of its said predecessors, or of its said corps of editors, authors, or compilers, or any of them, and that said Dictionaries do not belong to either of said series of Abridged and Unabridged Dictionaries of your orator.

And your orator further shows that the use of the name "Webster's" as the designating title and description of defendant's said Dictionaries is unnecessary, false, and deceptive in every sense of the term; that Webster is not the author of said Dictionaries; that said dictionaries are not copies or reproductions of any Dictionary which has ever, at any time, borne the name or been described as a "Webster" Dictionary; that said Dictionaries are not copies or reproductions of any of your orator's said Dictionaries, which are copyrighted, owned, and published by your orator exclusively, and are the Dictionaries now known as "Webster's" Dictionaries; that by reason of the said false and deceptive use of the name "Webster's," as the designating title and description of defendant's said book, your orator is informed and believes, and so charges the fact to be, the public have been and are likely to be deceived and led to purchase one or more of defendant's said Dictionaries in the belief that it is one of the hereinbefore described Dictionaries of your orator, or that it is an edition, or the latest edition of one of the said series of dictionaries of your orator, and upon information and belief, many purchasers have actually been thus deceived.

And your orator further shows that in the prosecution of its said fraudulent purpose, defendant purchased or otherwise acquired the plates of a certain old dictionary published and copyrighted in to wit, the year 1904, under the name and title of "The Crown Dictionary," and thereupon defendant changed the name or title thereof, and dropped the words "Crown Dictionary," and substituted in lieu thereof the words "Webster's New Standard Dictionary," and in order to make it appear that its said Dictionary was a new production, defendant also omitted the former copyright notice which contained the date "1904," and substituted in lieu thereof a new copyright notice bearing the date "1911," and also placed in the publisher's imprint at the foot of the title page the date 1911;

that the purpose and effect of these changes was to conceal the true origin and identity of defendant's said Dictionary, and to lead purchasers and the public in general to buy defendant's said Dictionary in the belief that it is a new Dictionary first published in the year 1911, and that it is one of your orator's said series of "Webster's" Dictionaries, or a later or the latest edition thereof, whereas the true fact is that defendant's said Dictionary is a republication of said old "Crown Dictionary," and is printed from the same plates, or duplicates thereof, except as to a small amount of prefatory and supplemental matter, having no relation to the vocabulary or dictionary proper.

And your orator further shows that defendant's said Dictionaries have been widely advertised and announced under the designating name and description of "Webster's Dictionary" and "Webster's New Standard Dictionary," which said advertisements and announcements are false, ambiguous and misleading, and tend to deceive the public, and to pass off defendant's said Dictionaries as and for the Dictionaries of your orator.

And your orator further shows, upon information and belief, that said defendant purposes and threatens to continue to sell and offer for sale its said dictionaries entitled and marked as aforesaid, and to continue to publish and circulate said notices and advertisements in manner and form as aforesaid, and to publish and circulate other similar or equally misleading and damaging notices and advertisements, and is thereby threatening to cause, and is now causing, and necessarily will continue to cause your orator great loss in its said trade; and that purchasers have actually been deceived into buying one or more of the above-entitled books of defendant as and for the genuine book of your orator, or as and for an edition or the latest edition of one of the series of dictionaries published by your orator and its predecessors, as hereinbefore set forth; and that your orator's business and reputation has also been and is likely to be further injured because the Dictionaries so made and sold by defendant are defective and of an inferior quality, both in their literary as well as in their mechanical construction, by reason whereof the long established and well-earned reputation of your orator in those regards has been and

is likely to be greatly and permanently damaged, to-wit: in the sum of Five Thousand Dollars and upwards.

All in defiance of the rights acquired by and secured to your orator as aforesaid, and to its great and irreparable loss and injury, and by which it has been and is still being and necessarily will be deprived of great gains and profits which it might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed by said defendant by and through the aforesaid unlawful acts and doings.

VIII.

And you orator further shows unto your Honors that the value of the exclusive right in your orator to use and employ said word "Webster's" as the whole or a part of the title of said Dictionaries or either of them, and to use the same in publishing, selling and advertising for sale and in marketing said Dictionaries or either of them, exceeds exclusive of interest and costs, the sum of Fifty thousand dollars, and that the damage inflicted upon your orator by reason of the wrongful conduct of the defendant as hereinbefore stated exceeds the sum of Five thousand dollars exclusive of interest and costs, and that the matter in dispute between your orator and the defendant; exceeds exclusive of interest and costs said sum or value of Five thousand dollars.

And your orator further shows unto your Honors, on information and belief, that said defendant has printed or caused to be printed and sold large numbers of said Dictionaries and has large quantities on hand, which it is now offering for sale and is purposing to continue to offer for sale, and has made and realized considerable profits and advantage therefrom, but to what extent and how much exactly, your orator does not know, and prays discovery thereof. And your orator says that the publication and sale of said Dictionaries by said defendant and its preparation for and avowed determination to continue the same, in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to do the same.

IX.

And forasmuch as your orator can have no adequate relief except in this Court, to the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may according to its best and utmost knowledge, remembrance, information and belief, full, true, direct and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged as well as those in regard to which it is herein severally and separately interrogated as also the matters hereinbefore stated in general, but not under oath, the oath being hereby specifically waived, and to account for and pay to your orator the profits by it acquired, and the damages suffered by your orator from the aforesaid unlawful acts ;

And that said defendant, its agents, servants, attorneys, and workmen, and each and every of them, be restrained and enjoined provisionally and perpetually by the order and injunction of this Honorable Court from directly or indirectly using the word " Webster's," either alone or in association with any other word, in connection with the publication and sale of its said dictionaries, as the name of, or as descriptive of, such dictionaries, or in any other manner without clearly distinguishing such dictionaries from the dictionaries of your orator, and especially from selling and offering for sale its said dictionaries under the name or title of " Webster's " New Standard Dictionary," and from publishing and circulating any notices or advertisements wherein its said dictionaries are designated by a name or title in which the word Webster or Webster's appears, either alone or in connection with other words or any other notices or advertisements in such manner and form that the natural and probable tendency and effect thereof will be to deceive and mislead the public into purchasing said dictionaries as and for the genuine dictionaries of your orator, or as and for an edition of, or the latest edition of either of the said series of dictionaries published by your orator and its predecessors as aforesaid and that the defendant may be decreed to pay the cost of this suit ; and that your orator may have such further relief, or such

other relief, as to this Honorable Court shall seem meet, and as shall be agreeable to equity.

May it please your Honor to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said defendant, and its servants, agents, attorneys and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

May it please your Honors to grant your orator the writ of subpœna, issuing out of and under the seal of this Honorable Court, directed to the said defendant the Syndicate Publishing Company commanding it by a certain day, and under a certain penalty, to be and appear in this Honorable Court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against it.

And your orator will ever pray, &c.

JUDSON & HALE,

Complainant's Solicitors.

WILLIAM B. HALE,

Of Counsel.

The defendant is required to answer the interrogatories hereto annexed marked 1 and 2.

JUDSON & HALE,

Complainant's Solicitors.

INTERROGATORIES.

1. Whether or not the defendant, or its agents or servants, or one of them, have since the first day of January, 1911, offered for sale or sold one or more copies of said dictionaries hereinbefore described, entitled "Webster's New Standard Dictionary," either with or without other words, the Dictionaries in question being those a copy of which is filed as an exhibit herein marked: "Complainant's Exhibit, Defendant's Dictionary?"

2. How many of said Dictionaries have been sold by said defendant and how many has it now on hand?

UNITED STATES OF AMERICA, }
 State of Massachusetts, } ss. :
 COUNTY OF HAMPDEN, }

On this 8th day of Nov., 1911, before me personally appeared Orlando M. Baker, to me known to be the President of G. & C. Merriam Co., complainant above named, who, being by me duly sworn, deposes and says that he is the President of the complainant herein. That he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why this verification is not made by the complainant is that said complainant is a corporation of which this affiant is an officer, to wit, the President.

ORLANDO M. BAKER.

Sworn to before me this 8th }
 day of Nov., 1911. }

CHARLES S. CLEAVES,

[SEAL]

Notary Public,

Springfield, Mass.

(County Clerk's certificate.)

"B."

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

G. & C. MERRIAM COMPANY, a Cor-
poration,
Complainant,

vs.

SYNDICATE PUBLISHING COMPANY, a
Corporation,
Defendant.

Amendment to bill.

Now comes the complaint in the above entitled cause, and amends its bill of complaint herein, as follows, to wit :

FIRST. Insert at the end of subdivision No. VI., at the foot of page 21 of the bill of complaint as filed herein, the following new matter :

And your orator further shows that by reason of the use aforesaid, the name " Webster's " has become, and now is the genuine trade-mark of your orator, for its said dictionaries, and that at the time of the adoption of said trade-mark by your orator's said predecessors, as hereinbefore set forth, no other person, firm or corporation engaged in the manufacture, publication or sale of dictionaries was using the said word " Webster's " as a trade-mark or as a designation to designate their goods from those of others, to the best of your orator's knowledge, information and belief, and that your orator, and its said predecessors had the legal right to appropriate and use said word " Webster's " as a lawful trade-mark for its said dictionaries.

And your orator further shows that heretofore, and prior to the time of the committing of the grievances by defendant hereinafter complained of, and for the better protection of

the trade and good-will of your orator in its said dictionaries, your orator adopted and used, and is now using certain trade-marks consisting of the word "Webster's" in combination and association with other words or features, which said trade-marks your orator caused to be duly registered in the Patent Office of the United States, in accordance with the statute in such case made and provided, as follows, to wit :

On September 23rd, 1890, a trade-mark consisting of the words "Webster's International Dictionary," surrounded by a circle, and surmounted by a monogram enclosed in a wreath, a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 1."

On March 26, 1895, a trade-mark consisting of the word "Webster's" surrounded by a circle, and surmounted by a monogram, enclosed in a wreath, a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 2."

On January 1, 1907, a trade-mark consisting of the words "Webster's Academic," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-Mark No. 3."

On January 1, 1907, a trade-mark consisting of the words "Webster's Common School," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 4."

On January 1, 1907, a trade-mark consisting of the words "Webster's Practical," a Patent Office copy of which is hereto annexed, and marked "Complainant's Exhibit, Registered Trade-mark No. 5."

On January 1, 1907, a trade-mark consisting of the words "Webster's High School," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 6."

On January 1, 1907, a trade-mark consisting of the words "Webster's Condensed," a Patent Office copy of which is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 7."

On January 8, 1907, a trade-mark consisting of the words "Webster's National Pictorial," a Patent Office copy of which

is hereto annexed, and marked, "Complainant's Exhibit, Registered Trade-mark No. 8."

On January 1, 1907, a trade-mark consisting of the words "Webster's Primary," a Patent Office copy of which is hereto annexed, and marked "Complainant's Exhibit, Registered Trade-mark No. 9."

On January 1, 1907, a trade-mark consisting of the words, "Webster's Counting House and Family," a Patent Office copy of which is hereto annexed, and marked "Complainant's Exhibit, Registered Trade-mark No. 10."

All of which will more fully and at large appear by certificates of said registrations, or copies thereof, duly certified by the Patent Office and here in court to be produced.

SECOND. Insert in said bill, at the foot of page 25 thereof, and immediately after the words, "to pass off defendant's said dictionaries as and for the dictionaries of your orator," the following new matter, to wit:

And your orator further shows that defendant has unlawfully and in violation of our orator's rights, as aforesaid, appropriated, used, and imitated your orator's said trade-marks upon its said dictionaries, and that defendant has done this by printing, stamping or otherwise affixing to its said dictionaries the word "Webster's" in a manner closely imitating your orator's said registered trade-marks or one of them, and which might be readily mistaken therefor by purchasers and the public in general, and the natural and probable tendency and effect of which is to deceive the public, and to pass off defendant's said dictionaries as and for the dictionaries of your orator."

THIRD. Insert in the prayer for relief, in paragraph No. IX, of said bill, at about the middle of page 27 thereof, and immediately following the words, "Webster's New Standard Dictionary," the following words, to wit:

And from in any manner copying, imitating, or infringing any of your orator's said registered trade-marks.

Dated New York, November 27, 1911.

JUDSON & HALE,

Solicitor for Complainant.

WILLIAM B. HALE,

Counsel for Complainant.

UNITED STATES OF AMERICA, }
 State of Massachusetts, } ss. :
 COUNTY OF HAMPDEN, }

ORLANDO M. BAKER, being first duly sworn, deposes and says : I am the President of G. & C. Merriam Company, the complainant above named. I have read the foregoing amendment to the bill of complaint herein, and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true. The reason why this verification is not made by the complainant, is that said complainant is a corporation, and not capable of making this affidavit.

ORLANDO M. BAKER.

Subscribed and sworn to be- }
 fore me this 27 of Novem- }
 ber, 1911.

CHARLES S. CLEAVES,

[SEAL]

Notary Public,
 Springfield,
 Mass.

TRADE-MARK.

G. & C. MERRIAM & CO.
DICTIONARIES.

No. 18,449.

Registered Sept. 23, 1890.

(Complainant's Exhibit,
Registered Trade-Mark No. 1)



WEBSTER'S
INTERNATIONAL
DICTIONARY

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM & CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

STATEMENT and DECLARATION of Trade-Mark No. 18,449, registered September 23, 1890.

Application filed August 15, 1890.

STATEMENT.

To all whom it may concern:

Be it known that we, G. & C. MERRIAM & Co., a firm domiciled and having an office and place of business in the city of Springfield, in the county of Hampden and State of Massachusetts, and composed of HOMER MERRIAM, GEORGE S. MERRIAM, ORLANDO M. BAKER, and H. CURTIS ROWLEY, residing at and citizens of said city of Springfield; BIRDSEYE BLAKEMAN and GEORGE R. CATHCART, residing at and citizens of the city, county, and State of New York; HENRY IVISON and DAVID B. IVISON, residing at and citizens of Rutherford, county of Bergen, and State of New Jersey, and L. HENRY BLAKEMAN, residing at and a citizen of Orange in the county of Essex and State of New Jersey, have adopted for our use a Trade-Mark for books, more especially Dictionaries, of which the following is a full, clear, and exact description.

Our trade-mark consists of an interwoven script cipher composed of the capital letters "N" and "W" partially surrounded by a wreath of flowers, leaves, or the like, the whole surmounting the words "Webster's International Dictionary." These have generally been arranged as shown in the accompanying fac-simile—i. e., in the form of a medallion upon the upper face of which is printed or embossed said interwoven script cipher "N

"W," said cipher being partially surrounded by a wreath of flowers or leaves, beneath which are the letters and words "Webster's International Dictionary," and the whole being placed within a circle, so as to form a medallion, all the other parts of said trade-mark, except the interwoven cipher "N W" and the words "WEBSTER'S INTERNATIONAL," which are essential features, being changeable at pleasure at our option without materially altering the character of our trade-mark.

This trade-mark in its entirety has been used continually in business by us since July 31, 1890.

The class of merchandise to which this trade-mark is appropriated is books, and the particular description of books comprised in such class on which it is used by us is dictionaries.

It has been our practice to stamp or print our said trade-mark on the title-page of the dictionaries and to stamp or emboss the same upon the outside or cover thereof, and also to print the same upon the outside of parcels containing said dictionaries, or to print the same upon tags or labels, which are secured to the goods in any desired manner.

G. & C. MERRIAM & CO.

Witnesses:

CHAS. S. CLEAVES,
A. G. BAKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is a member of the firm the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm at this time has a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to

deceive; that the trade-mark is used by the said firm in commerce between the United States and foreign nations, and particularly with England, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

ORLANDO M. BAKER.

Sworn and subscribed before me, a notary public, this 7th day of August, 1890.

[L. S.]

EDWARD MORRIS,
Notary Public.

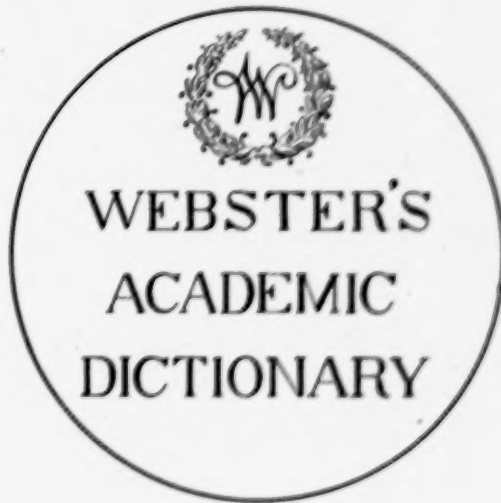
TRADE-MARK.

G. & C. MERRIAM COMPANY.
EDUCATIONAL BOOKS.

No. 26,273.

Registered Mar. 26, 1895.

(Complainant's Exhibit
Registered Trade-Mark No. 2)



WITNESSES:

Frank S. Ober
A. H. Hayes

PROPRIETOR:

G. & C. Merriam Company
BY
Charles F. Judson
ATTORNEY

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM COMPANY, OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR EDUCATIONAL BOOKS.

STATEMENT and DECLARATION of Trade-Mark No. 28,273, registered March 26, 1895.

Application filed February 21, 1895.

STATEMENT.

To all whom it may concern:

Be it known that the G. & C. MERRIAM COMPANY, a corporation organized under the laws of Massachusetts, and located in the city of Springfield, county of Hampden, and State of Massachusetts, has adopted for its use a Trade-Mark for Books, of which the following is a full, clear, and exact specification.

The said trade-mark consists in a monogram composed of the capital letters "N" and "W" together with the word "Webster's." These have generally been arranged as shown in the accompanying fac-simile; i. e., in the form of a medallion, upon the face of which is printed or embossed said monogram composed of the interwoven script letters "N W" partially surrounded by a wreath of flowers or leaves beneath which is the word "Webster's" together with such other word or words as may indicate the character of the book upon which it is placed, the whole being placed within a circle so as to produce in general effect the medallion-like appearance. These features are all shown in black in the accompanying drawing but any other design or color may be used or the different features may be differently colored or all or part of the non-essential features may be omitted or changed at pleasure and the mark may be used in conjunction with other matter with-

out materially affecting the character of the trade-mark, the essential features of which are the monogram composed of the letters "N" and "W" together with the word "WEBSTER'S."

This trade-mark in its entirety has been used continuously in business by said company since October, 1890.

The class of merchandise to which this trade-mark is appropriated is books and the particular description of books comprised in such class on which it is used by said company is educational books.

It has been the practice of said company to stamp or print its said trade-mark on the title page of the books and to stamp or emboss the same upon the outside or cover thereof, and also to print the same upon the outside of parcels containing said books or to print the same upon tags or labels.

[L. S.] G. & C. MERRIAM CO.,
By O. M. BAKER,
Treasurer.

Approved: HOMER MERRIAM,
President.

Witnesses:
THOS. H. STOCK,
A. G. BAKER.

DECLARATION.

State of Massachusetts, county of Hampden.

ss:

ORLANDO M. BAKER being duly sworn, deposes and says that he is the treasurer of the corporation named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of the trade-mark therein described; that no other person, firm or corporation has a right to such use either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation

in commerce between the United States and foreign nations or Indian tribes and particularly with the Dominion of Canada and the Hawaiian Islands and Great Britain, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

ORLANDO M. BAKER.

Sworn to and subscribed before me, a notary public, this 13th day of February, 1895.

[L. S.] CHARLES S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,188.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.
DICTIONARIES AND REFERENCE MANUALS.
APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 3)

WEBSTER'S
ACADEMIC

Proprietor
G. & C. Merriam Co.
by Hall & Hegleman
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,188.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 11, 1906. Serial No. 19,430.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM Co., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement, that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,189.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.
DICTIONARIES.

APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 4)

WEBSTER'S
COMMON SCHOOL

Proprietor
G. & C. Merriam Co.
by H. A. H. H. H. H. H.
at New York.

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,189.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 11, 1906. Serial No. 19,432.

STATEMENT.

To all whom it may concern:

Be it known that G & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,192.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.
DICTIONARIES AND REFERENCE MANUALS.
APPLICATION FILED MAY 17, 1906.

(Complainant's Exhibit,
Registered Trade-mark No. 5)

WEBSTER'S
PRACTICAL

Proprietor
G. & C. Merriam Co.
by Hall & Heylman
Attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,192.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 18,616.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which said mark is used is dictionaries and reference-

manuals or combined dictionary and reference-manuals.

The trade-mark is usually displayed upon the goods by printing or impressing the same directly upon the books and upon the packages in which the books are arranged.

[I. e.] G. & C. MERRIAM CO.,

By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,

President.

Witnesses:

BERTON E. HALL,

RICHARD S. BETTUS.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[I. e.]

CHAS. S. CLEAVES,

Notary Public.

TRADE-MARK.

No. 59,193.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES.

APPLICATION FILED MAY 17, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 6)

WEBSTER'S
HIGH SCHOOL

Proprietor
G. & C. Merriam Co.
by Adair & Stephens
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,193.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,817.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,

By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,

President.

Witnesses:

BERTON E. HALE,

ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,

Notary Public.

TRADE-MARK.

No. 59,191.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.

DICTIONARIES AND REFERENCE MANUALS.

APPLICATION FILED MAY 17, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 7)

WEBSTER'S
CONDENSED

Proprietor

G. & C. Merriam Co.

by Hall & Abingdon 18 079

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,191.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,615.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference-manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
RICHARD S. BETTES:

DECLARATION.

State of Massachusetts, county of Hampden, ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States

of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors, from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

TRADE-MARK.

No. 59,473.

REGISTERED JAN. 8, 1907.

G. & C. MERRIAM CO.
DICTIONARIES.

APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 8)

WEBSTER'S
NATIONAL PICTORIAL

Proprietor
G. & C. Merriam Co.
by Hall & Heylman
attys

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,473.

Statement and Declaration.

Registered Jan. 8, 1907.

Application filed May 11, 1906. Serial No. 19,431.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.,
By H. C. ROWLEY,
Treasurer.

Approved: O. M. BAKER,
President.

Witnesses:
BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the

United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

No. 59,130.

TRADE-MARK.

REGISTERED JAN. 1, 1900.

G. & C. MERRIAM CO.

DICTIONARIES.

APPLICATION FILED MAR 11, 1900.

(Complainant's Exhibit,
Registered Trade-Mark No. 9)

WINTER'S
PRIMER

*Respectfully
G. & C. Merriam Co.
by Matt. D. Hoffman
at New York*

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES.

No. 59,130.

Statement and Declaration.

Registered Jan. 1, 1907.

Application filed May 17, 1906. Serial No. 19,618.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM Co., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at No. 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of

goods comprised in said class upon which said mark is used is dictionaries.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.]

G. & C. MERRIAM CO.,

By H. C. ROWLEY,

Treasurer.

Approved:

O. M. BAKER,

President.

Witnesses:

BERTON E. HALE,

ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,

ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States

of the United States; that the description, drawing and facsimiles truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.]

CHAS. S. CLEAVES,

Notary Public.

No. 59,187.

TRADE-MARK.

REGISTERED JAN. 1, 1907.

G. & C. MERRIAM CO.
DICTIONARIES AND REFERENCE MANUALS.
APPLICATION FILED MAY 11, 1906.

(Complainant's Exhibit,
Registered Trade-Mark No. 10)

WEBSTER'S
COUNTINGHOUSE
AND
FAMILY

Proprietor
G. & C. Merriam Co.
by Hall & Heylman
attys.

UNITED STATES PATENT OFFICE.

G. & C. MERRIAM CO., OF SPRINGFIELD, MASSACHUSETTS.

TRADE-MARK FOR DICTIONARIES AND REFERENCE-MANUALS.

No. 59,187.

Statement and Declaration.

Registered Jan. 1, 1906.

Application filed May 11, 1906. Serial No. 19,429.

STATEMENT.

To all whom it may concern:

Be it known that G. & C. MERRIAM CO., a corporation duly organized under the laws of the State of Massachusetts, and having its principal place of business at 499 Main street, in the city of Springfield, State of Massachusetts, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in the business of said corporation since 1892 and in the business of its predecessor since 1867.

The class of merchandise to which the trade-mark is appropriated is Class 68, Publications, and the particular description of goods comprised in said class upon which

said mark is used is dictionaries and reference-manuals or combined dictionary and reference-manual.

The trade-mark is usually displayed upon the goods by imprinting or impressing the same directly upon the books and upon the packages in which the books are wrapped.

[L. s.] G. & C. MERRIAM CO.

By H. C. ROWLEY,
Treasurer.

Approved:

O. M. BAKER,
President.

Witnesses:

BERTON E. HALE,
ALBERT BOEDEKER.

DECLARATION.

State of Massachusetts, county of Hampden,
ss:

ORLANDO M. BAKER, being duly sworn, deposes and says that he is the president of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto which might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several

States of the United States; that the description, drawing and facsimiles presented truly represent the mark sought to be registered, and that the mark has been in actual use as a trade-mark of the applicant, or its predecessors from whom it derived title, for ten years next preceding the passage of the act of February 20, 1905, and that to the best of his knowledge and belief such use has been exclusive.

ORLANDO M. BAKER.

Subscribed and sworn to before me, a notary public, this 5th day of May, 1906.

[L. s.] CHAS. S. CLEAVES,
Notary Public.

"D."

Decree of Affirmance and Order for Mandate.

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court rooms, in the post-office building, in the City of New York, on the 28th day of June, one thousand nine hundred and thirteen.

Present: HON. E. HENRY LACOMBE, HON. HENRY G. WARD,
HON. WALTER C. NOYES, Circuit Judges.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

vs.

SYNDICATE PUBLISHING COMPANY,
Defendant-Appellee.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

[ENDORSED:] United States District Court of Appeals, Second Circuit. Merriam Co. vs. Syndicate Pub. Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jul. 2, 1913, William Parkin, Clerk.

[12695]

"C."

Final Decree.

At a Stated Term of the United States District Court for the Southern District of New York, held in the Court House, Borough of Manhattan, City of New York, on the 31st day of December, 1912.

Present—HON. LEARNED HAND, District Judge.

G. & C. MERRIAM COMPANY

VS.

SYNDICATE PUBLISHING COMPANY.

} E 8-162.

This cause came on to be further heard at a term of this Court, held in the Borough of Manhattan, on the 3rd day of December, 1912, and was argued by counsel, and thereupon, upon consideration thereof, it is

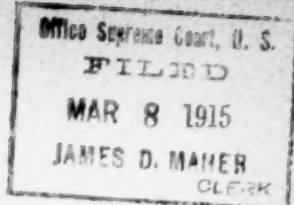
ORDERED, ADJUDGED AND DECREED, that the Bill of Complaint of the complainant herein be and the same is hereby dismissed upon the merits. And it is

FURTHER ORDERED, ADJUDGED AND DECREED that the complainant, G. & C. Merriam Company, do pay to defendant, Syndicate Publishing Company, the sum of
and

its costs as taxed by the Clerk of this Court, and that the defendant Syndicate Publishing Company, do have execution therefor.

LEARNED HAND,
D. J.

(Filed Jan. 6th, 1913.)



Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 217.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,
vs.

THE SYNDICATE PUBLISHING COMPANY,
Defendant-Appellee.

**Brief in Support of Defendant-Appellee's Motion
to Dismiss the Appeal of Complainant-Appellant.**

HUGH A. BAYNE,
Counsel for Defendant-Appellee.

C. G. DUNGORTER, 73 to 76 Spring Street, New York.



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1914. No 217.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

VS.

SYNDICATE PUBLISHING COMPANY,
Defendant-Appellee.

**BRIEF IN SUPPORT OF DEFENDANT-AP-
PELLEE'S MOTION TO DISMISS PLAINT-
IFF-APPELLANT'S APPEAL.**

Appellant's bill of complaint (Motion Papers "A"), apart from the amendment hereinafter referred to, sets forth merely a cause of action for unfair competition in trade, the allegations being, in substance, that appellant's long use of the name "Webster's," in connection with the titles of its dictionaries, have given that name a secondary meaning, indicating dictionaries published by appellant, and that appellee's use of the name "Webster's" in the title of its dictionaries entitled "Webster's New Illustrated Dictionary," and "Webster's New Standard Dictionary" resulted in palming off appellee's dictionaries as and for dictionaries published by appellant.

No right to appeal to this Court exists, of course, from an adverse decision by the Circuit Court of Appeals upon the foregoing cause of action.

Later, however, by amendment (Motion Papers "B") appellant added allegations to its bill to the effect that the name "Webster's" was appellant's technical trade-mark for dictionaries, registered as such under the Federal Statutes of 1905 and 1881.

Eight of the ten registered marks referred to (Complainant's Exhibits, Registered Trade-Mark Nos. 3 to 10 both inclusive attached to "B" of the motion papers) were registered under the "ten year clause" of the Act of February 20, 1905, Sec. 5. The other two (Id., Complainant's Exhibits, Registered Trade-Marks, Nos. 1 and 2) were registered under the Act of March 3, 1881.

No appeal lies to this Court from an adverse decision in a case arising under the foregoing Act of 1905.

Street & Smith vs. Atlas Manufacturing Company,
231 U. S., 348 (1913).

No charge is made that Appellee infringed any feature of the foregoing alleged trade-marks except the name "Webster's." Appellee's dictionary^x annexed to the bill, shows that there is no other feature of similarity.

This Court, therefore, has no jurisdiction to entertain this appeal unless the name "Webster's" was entitled to registration as a trade-mark under the Act of March 3, 1881.

In *Elgin National Watch Company vs. El. Watch Case Co.*, 179 U. S., 665, an analogous jurisdictional question was decided by this Court.

Leaving aside the question whether the Patent Office intended, by granting the two above registrations, under the Act of 1881, to recognize "Webster's" as a trade-mark except when used in conjunction with the designs, symbols, and collocations described in the registered drawings and declarations, it is obvious, I submit, on the face of appellant's bill and exhibits, that the name "Webster's" was not subject to appropriation as a trade mark, nor entitled to protection as such, under the Act of 1881.

The Act of 1881 did not purport to recognize as trade-marks names which, under the Common law, were not subject to exclusive appropriation. Not only are proper names, under the Common law, not subject to such exclusive appropriation, but the Act itself expressly forbade (Sec. 2) registration of the

x A picture of the cover, back and title page
hereof will be found at page 90 of Appellant's
brief on this appeal

name of the applicant; so that, *a fortiori*, the name of a stranger might not be exclusively appropriated by the applicant.

When it further appears, from the complaint itself, that the stranger whose name applicant claims as his trade-mark for dictionaries was the greatest lexicographer this or any English speaking country ever produced; that the Dictionary in words (*Webster's Dictionary*) has, by the acquisition of the copyright, long been in the public domain, free for anyone to publish and that it bears the same which identifies and describes it, it seems obvious that the allegations of applicant's amended bill to the effect that applicant is owner of the name "*Webster's*" as a trademark trade-mark even inserted solely to give color to a claim that this Court would have appellate jurisdiction. Applicant hoped, perhaps, to secure an opinion from this Court which might further the long continued, persistent but hitherto uniformly unsuccessful efforts to secure judicial recognition of its pretension to exclusive rights in the name "*Webster's*" as against competing Dictionary publications whose books are based on the work of that famous lexicographer.

The list of its suitors follows to show that competition is a long one.

Merriam vs. Bellows, 65 Fed. Cl., 600 was the last one.

In that case Justice *Wright* characterized the Merriam Co.'s pretension to exclusive rights in the name "*Webster's*" as "all nonsense" (p. 675). This Court quoted the language in the *Niger* case (210 U. S., at page 140).

To the same effect are:

Merriam vs. Francis & Taylor Company, 67 Fed. Cl., 601;

Merriam vs. Towne Printing Co., 66 Fed. Cl., 566;

Merriam vs. Stevens, 100 Fed. Cl., 677;

Cyprus vs. Merriam, 125 Fed. Cl., 600; 103 Fed. Cl., 600; 271 Fed. Cl., 107; 100 Fed. Cl., 607;

Merriam vs. Southfield, 100 Fed. Cl., 607; 100 Fed. Cl., 608.

In the *Ogilvie* cases (*supra*) Ogilvie, complaining that appellant interfered with his Webster's dictionary business, by claiming exclusive rights in the name "Webster's," brought suit against appellant, and succeeded in obtaining a perpetual injunction restraining it from

"in any manner claiming that it, the defendant, or any other person, firm or corporation claiming under or through it, has exclusive right to the use of the name 'Webster's' in the title of dictionaries" (190 Fed. R., at p. 931).

It is obvious, therefore, that appellant's claim that appellee's use of the name "Webster's" in the title of its dictionaries infringes appellant's rights presents no question involving a trade-mark entitled to registration under the Act of March 3, 1881, but only questions of secondary meaning rights, or of unfair competition, as to which this Court has no appellate jurisdiction by appeal.

Conscious that appellant's right of appeal to this court was, at best, doubtful, appellant, after perfecting the appeal, petitioned this court to take jurisdiction of this case by writ of *certiorari*. That petition was denied.

Appellant's appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

HUGH A. BAYNE,
Of Counsel for Appellee.

Supreme Court of the United States,

OCTOBER TERM, 1914.

G. & C. MERRIAM COMPANY,
Complainant-Appellant,

VS.

SYNDICATE PUBLISHING COMPANY,
Defendant-Appellee.

No. 217.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL FOR WANT OF JURISDIC- TION.

I.

THIS APPEAL LIES AS A MATTER OF RIGHT; THIS COURT HAS JURISDICTION; AND THE WHOLE CASE IS OPEN TO REVIEW.

A single cause of action is alleged in the bill of complaint, as amended. The act complained of is the sale by defendant of a British dictionary, known by the name of "British Empire Dictionary," under the false and misleading name, stamp or brand of "Webster's" dictionary, it being neither a copy of, nor in any way related to, or connected with, any edition of "Webster's" dictionary. This act is charged to be a violation of complainant's rights as the long established proprietor of the well known "Webster's" dictionaries in that (a) it constitutes unfair or fraudulent competition, and (b) it infringes certain specific trade-marks registered under the United States Trade-Mark Acts

of March 3, 1881, and also certain other trade-marks registered under the Act of February 20, 1905.

Jurisdiction of the Circuit Court was not rested entirely upon the ground of diversity of citizenship, although that fact exists and is duly alleged (Motion Papers, p. 7). The jurisdiction was also expressly rested upon a claim of a right, privilege or immunity under the Federal Trade-Mark Acts of 1881 and 1905. Accordingly, this case is not one in which the decision of the Circuit Court of Appeals is made final by Judicial Code, Section 128, and, therefore, by the express provisions of Judicial Code, Section 241, this appeal lies as a matter of right unless limited by some provision in the Trade-Mark Acts. The Act of 1905 does contain provisions making the decision of the Circuit Court of Appeals final in cases arising under *that* Act, and if the only question of federal right involved in this case arose under the Act of 1905 this appeal would not lie (*Street & Smith v. Atlas Mfg. Co.*, 231 U. S. 348).

But this case does not arise solely or mainly under the Act of 1905. The bill alleges and claims rights under the Act of 1881, under which complainant's basic and broadest trade-marks are registered (See trade-marks Nos. 1 and 2, Motion Papers, pp. 53 *et seq.*). Accordingly an appeal does lie herein as a matter of right, for, as this court said in the *Street & Smith* case, *supra*:

"Of course, that case and this are not to be confused with others arising under earlier trade-mark laws not containing any provisions respecting appellate jurisdiction such as are embodied in the act of 1905."

This court has repeatedly held that where one ground for invoking the jurisdiction of the federal circuit court is the registration of a trade-mark under the

Act of 1881, this court has jurisdiction of an appeal, which lies as a matter of right (*Baglin v. Cusenier Co.*, 221 U. S. 580; *Jacobs v. Beecham*, 221 U. S. 263; *Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U. S. 446; *Warner v. Searle & H. Co.*, 191 U. S. 195).

The decisions of this court last above cited also establish the proposition that where there is general federal jurisdiction of the whole case because of diverse citizenship, and also a federal question arising under the trade-mark laws giving a right of appeal to this court, the whole case comes up for review, and this court has, and will exercise, jurisdiction to determine the question of unfair competition, and all other questions arising upon the record, regardless of its determination of the questions of validity and infringement of trade-mark (*Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U. S. 446, and cases last above cited). The principle is the same as in cases of direct appeals where a constitutional question is involved. In such cases this court has jurisdiction to determine every question arising upon the record,—non-federal as well as federal questions, and is not limited to a determination of the constitutional question (*Boise Artesian Hot & Cold Water Co. v. Boise City*, 230 U. S. 84; *Chappel v. United States*, 160 U. S. 499). The general rule is that if the cause of action is based upon a federal statute, an appeal lies to this court from the decree of the Circuit Court of Appeals (*Chicago Junction R. Co. v. King*, 222 U. S. 222). Here the cause of action is based upon the Federal Trade-Mark Act of 1881, which expressly provides (§ 7):

“Courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy.”

The fact that the same acts which violate appellant's rights under the Act of 1881 also violate rights claimed under the Act of 1905, and the common law against fraudulent competition, does not deprive this court of jurisdiction. The required jurisdictional amount is in controversy and is duly alleged (Motion Papers, p. 45).

The fact that infringement of registered trademarks was added to the bill by amendment does not make the decision of the Circuit Court of Appeals final (*Vicksburg v. Henson*, 231 U. S., 259). Such amendment was filed before defendant had answered the original bill, and within the time within which complainant was entitled to amend as of right.

II.

THE FALLACY IN APPELLEE'S ARGUMENT.

The fallacy in appellee's argument in support of its motion to dismiss consists, first, in overlooking the fact that diverse citizenship exists in this case, thus giving general federal jurisdiction of the whole case, including both federal and non-federal questions. The *Elgin National Watch Co.* case (179 U. S. 665), relied on by appellee, was expressly distinguished upon this ground in *Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U. S. 446. The case at bar presents the precise situation dealt with in the *Standard Paint Co.* case, *supra*. There being general federal jurisdiction of the whole case because of diverse citizenship, and the decision of the Circuit Court of Appeals not being made final, because the jurisdiction of the Circuit Court was not based entirely upon such diverse citizenship, and there being no pro-

vision in the Trade-Mark Act of 1881 making the decision of the Circuit Court of Appeals final in cases arising under that act, this court has jurisdiction of this appeal, and the motion to dismiss should be denied.

A second fallacy in appellee's argument is the attempted division of a single cause of action into three separate causes of action, and the assertion that as to two of such causes of action, viz., unfair competition, and infringement of trade-marks registered under the Act of 1905, no appeal lies to this Court, and that as to the alleged third cause of action, viz., infringement of trade-marks registered under the Act of 1881, the trade-marks are invalid, and not infringed. It is not permissible to split a single cause of action in this manner. Moreover, the questions as to the validity and infringement of the trade-marks registered under the Act of 1881 are questions on the merits, and are not open upon a motion to dismiss for want of jurisdiction. They are questions to be determined at the hearing of the appeal on the merits. They are fully argued in appellant's brief, already served and filed, and appellant claims the right to be heard thereon.

To prevent misapprehension, it is proper to state here that every one of the prior "Webster's Dictionary" cases cited in appellee's brief on this motion (p. 3) resulted in a decision in favor of this appellant. Appellee's statement of their result is inaccurate and unfair. But this goes to the merits. These cases are all discussed in appellant's brief on this appeal already filed. Precisely similar trade-marks were held valid and infringed in the "*Singer Sewing Machine*" case (163 U. S. 169), and the "*Beecham's Pills*" case (221 U. S. 263).

III.

SOME EQUITABLE CONSIDERATIONS.

This appeal was perfected in the summer of 1913, and appeared on the calendar of this court for the October Term, 1913. The case of *Street & Smith v. Atlas Mfg. Co.*, 231 U. S. 348, had not then been decided. Out of abundant caution, appellant also petitioned this court for a writ of *certiorari*. Appellee opposed said petition upon the ground that such writ was unnecessary, because the case was already here on appeal. The writ of *certiorari* was accordingly denied. It would be unjust, at this late day, to dismiss the appeal, unless a total want of jurisdiction is clearly apparent, and if necessary, the court should even now grant a writ of *certiorari*. Appellant has been put to large expense in printing the record, and in preparing and printing its brief on the appeal. The case is now on the eve of being reached for argument on the merits. A motion to dismiss at this late day should not be received with favor.

The motion to dismiss for want of jurisdiction should be denied, or at least reserved until the argument on the merits.

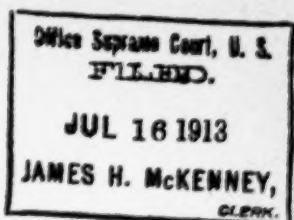
Respectfully submitted,

WILLIAM B. HALE,

Counsel for Appellant.

NEW YORK, March 15, 1915.

217
No. ~~611~~



IN THE
Supreme Court of the United States,
OCTOBER TERM, A. D. 1913.

G. & C. MERRIAM COMPANY,

Petitioner.

v.s.

SYNDICATE PUBLISHING COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

WILLIAM B. HALE,

Counsel for Petitioner.

IN THE
Supreme Court of the United States,
OCTOBER TERM, A. D. 1913.

G. & C. MERRIAM COMPANY,
Petitioner,

VS.

THE SYNDICATE PUBLISHING
COMPANY,
Respondent.

**Petition for Writ
of Certiorari.**

TO THE HONORABLE, THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

Your petitioner, G. & C. Merriam Company,
a corporation, of Springfield, Massachusetts,
respectfully shows:

The object of this suit is to protect the well
known Webster's Dictionary from unfair and
fraudulent competition whereby the public is de-
ceived and the petitioner damaged. The precise
question presented is whether or not the expira-
tion of copyright upon an early obsolete edition
of Webster's Dictionary justifies respondent in
obtaining the plates of a book called the Crown
Dictionary, which is a mere American reprint of
a British book called the British Empire Diction-
ary, and in printing therefrom a book re-entitled
Webster's New Standard Dictionary, the only
new thing about it being the title. No infringe-
ment of petitioner's copyrights is charged, and no
protection to literary property as such is sought.
The text of respondent's book does not infringe
the text of petitioner's books. It is a wholly dif-
ferent composition. It is merely the title that in-
fringes. The bill seeks an injunction against un-
fair competition whereby respondent is trespass-

ing upon the good will and reputation of petitioner's current Webster's dictionaries and in deceiving the public into purchasing respondent's British dictionary under the belief that it is one of the current Webster dictionaries, which enjoy an established authority and reputation, and for which there is a steady call in the market, created by petitioner's labor, skill and expenditures. The principal facts are as follows:

Petitioner is the publisher and proprietor of the well known reference work known as Webster's Dictionary, which, with the equally well known Standard, Century and Worcester's dictionaries, is one of the universally recognized and accepted dictionary authorities of this country. The now current Webster dictionaries of petitioner are the last regular successive editions and revisions of a series of Webster dictionaries originally prepared and owned by Noah Webster, and upon his death in the year 1843, transferred and assigned by his estate to petitioner's predecessor, the firm of G. & C. Merriam, of which petitioner is the corporate successor. Continuously since that time, for a period of almost seventy years, petitioner and its predecessors have carried on the business of revising and publishing this series of dictionaries.

Beginning in the year 1847, and continuing down to the present date, the Merriams have compiled, published, copyrighted and owned a long line of Webster dictionaries, both abridged and unabridged. Each successive book in this series was based upon and was a revision and an enlargement or abridgment of the preceding editions. As the older editions became obsolete, they were withdrawn from sale and the later editions took their names and place in the market. The full list of petitioner's said publis-

tions are the dictionaries now being sold by petitioner, and these are the books now known to and called for by the public by the short name of Webster's Dictionary.

Since the death of Noah Webster in 1843, the Merriams have four times revised and enlarged Webster's Unabridged Dictionary, by adding thousands of new words which have come into use, and by revising and enlarging the definitions of old words as modified by modern usage. These were the editions of 1847, 1864, 1890 and 1909. After each revision new abridgments were made to supply the demand for small authoritative dictionaries, which took the place of the old, and kept said small dictionaries in conformity with the latest unabridged edition. This work of revision and enlargement was done by men of the highest scholarship, among whom may be mentioned, Noah Porter, President of Yale; Daniel C. Gilman, President of Johns Hopkins; Arthur T. Hadley, President of Yale; Dr. W. T. Harris, United States Commissioner of Education; Professor William D. Whitney; Professors Edward S. Sheldon, George L. Kittridge, and Leo Wiener, of Harvard. Through these men and their co-workers the Merriams have built up Webster's Dictionary from a vocabulary of 70,000 words, compiled and defined by Noah Webster, to a work of 400,000 words and phrases, compiled and defined in the latest edition—Webster's New International Dictionary of 1909. This literary labor alone has cost the Merriams the sum of \$1,100,000 since the 1847 edition was superseded, and as a result of it, the Webster dictionaries of petitioner have become a standard authority of the English language in every

civilized country of the globe. More than 12,000,000 copies of petitioner's Webster dictionaries have been sold under that name since 1864, and for many years these dictionaries have been the officially adopted standard authority in the schools of this country. This school adoption and use has been practically universal, covering every section of the country. The various Courts of the country have for many years used petitioner's dictionaries as a standard authority, citing them as Webster's Dictionary or simply as Webster, which has always indicated a dictionary of petitioner's series. In advertising its Webster dictionaries, the Merriams have spent more than \$1,900,000, and have issued more than 86,000,000 circulars, in addition to continuous newspaper and magazine advertising, and for many consecutive years petitioner has spent in excess of \$50,000 annually for advertising its dictionaries. In this manner the name and reputation of Webster's Dictionary has been built up by petitioner and its predecessors through more than sixty years of effort and at a cost of over \$3,000,000.

The public reputation for accurate and authoritative contents is attached to the now current copyrighted dictionaries of petitioner. These alone are known as Webster's Dictionary to the present generation of average buyers and users of dictionaries. The earlier books in this series have become long since obsolete, and have been for many years superseded in the public mind and use by later and revised editions published and copyrighted by petitioner. In short, a purchaser now asking for a Webster's Dictionary desires and expects to receive one of the present standard dictionaries of established reputation which, with-

out controversy, are the dictionaries now being issued by petitioner.

In both a primary and a secondary sense the name Webster's Dictionary now indicates to the public the petitioner's dictionaries. All of petitioner's current books are now, and for a long time have been, published and copyrighted under the name or title of Webster's Dictionary, some additional descriptive word, like Unabridged, International, Condensed, Academic, High School, etc., being usually added to indicate the particular variety or size. They are all known as Webster's Dictionary and are universally called for by that name. The primary meaning of the term Webster's Dictionary, therefore, is the current dictionary of established reputation under that name, a book title being the generic description of the particular book bearing that title. The secondary meaning of the term Webster's Dictionary is that any book bearing that name comes from the same source, belongs to the same series, and has the same quality, authority and reputation as the previous well known Webster dictionaries. This case is unique among unfair competition cases, in that respondent's use of the term is false in both its primary and secondary senses. Petitioner's right to relief depends not alone upon proof that a descriptive term has acquired a secondary meaning and come to indicate petitioner's goods, but is supported also by the fact that even the present primary descriptive meaning of such term indicates the dictionaries of petitioner.

In 1911, the respondent, The Syndicate Publishing Company, published a dictionary entitled, "Webster's New Standard Dictionary", a copy of which is filed herewith marked, "Petitioner's

Exhibit, Respondent's Dictionary". This dictionary was admittedly printed from the plates of an older dictionary entitled "The Crown Dictionary", which last named dictionary was a mere reprint of a still older British dictionary, published in England, and entitled, "The British Empire Dictionary". Copies of said Crown Dictionary and said British Empire Dictionary are filed herewith as exhibits. As will appear from inspection of said dictionary exhibits, respondent simply changed the name from British Empire and Crown to Webster's, omitted the author's name and copyright notices, and substituted in lieu thereof the name of Noah Webster and a new copyright notice, and then issued the book as a new Webster Dictionary, without anything whatever to distinguish the same from the Webster dictionaries of petitioner, or to warn the purchasing public that it was not one of the series of established Webster dictionaries of which they had previously known, and which enjoyed an established reputation for excellence. Respondent then widely advertised and sold this British Empire or Crown Dictionary as a genuine Webster's Dictionary, and as Webster's New Standard Dictionary.

Thereupon, in November, 1911, petitioner filed its bill of complaint in the Circuit Court of the United States for the Southern District of New York, setting forth the facts hereinbefore stated, but amplified and in greater detail, and praying for an injunction restraining the respondent, The Syndicate Publishing Company, from using as the name or title of its said British Empire or Crown Dictionary the words, "Webster's Dictionary", or for such other relief as might be equitable,

upon the ground that such use of the name Webster's Dictionary as the substituted title of respondent's Crown or British Empire Dictionary was fraudulent and deceptive and had deceived many persons into buying respondent's dictionary as and for the dictionary of petitioner, and therefore constituted unfair competition.

Respondent appeared and filed an answer (1) denying that the name "Webster" had acquired a secondary meaning in connection with dictionaries, or that it indicated the dictionaries of petitioner; (2) asserting that the expiration of the copyright upon the early editions of Webster's Dictionary had rendered the name Webster wholly *publici juris*, and authorized its use as the title of any dictionary containing any part of the literary contents of the dictionaries of which Noah Webster was the author or proprietor; and (3) asserting that defendant's dictionary was "based" upon the 1847 edition of Webster's Unabridged Dictionary and was, therefore, entitled to be called Webster's Dictionary, without any explanatory statement affirmatively distinguishing it from petitioner's long established Webster dictionaries.

At final hearing the Court found and declared that the actual basis of respondent's book was the British Empire Dictionary. It further found that this British Empire Dictionary was in turn based upon another British Dictionary called the "Imperial Dictionary," which had been compiled by John Ogilvie about the year 1852, and that this dictionary of Ogilvie had been based in turn upon the Webster's Unabridged Dictionary of 1847. The Court held that this sort of literary descent authorized respondent, in the year 1911, to

rechristen its book and adopt the name Webster's Dictionary, although for half a century it and the sources from which it was derived had borne a different name and had a different and distinctive identity. The Court assumed for the purpose of the decision, though without making any finding thereon, that the name Webster had acquired a secondary meaning and become identified with petitioner's books. Thereupon the court dismissed the bill upon the merits with costs, thus affording petitioner no relief whatsoever. Upon appeal the Circuit Court of Appeals for the Second Circuit on, to wit, the 2nd day of July, 1913, affirmed the decree of the District Court upon the opinion below.

A certified transcript of the record is filed herewith as an exhibit, from which the foregoing facts will more fully and at large appear.

By this decision the Court below has adjudged that the expiration of copyright upon the early obsolete editions of the Webster series authorizes any one to publish substantially different and variant dictionaries under the title of Webster's Dictionary in competition with the current dictionaries of the established Webster series, already copyrighted and known by that name. Specifically it was held that respondent was authorized to import an old English dictionary entitled, "British Empire Dictionary" and dropping that name, to reprint and sell it under the title of Webster's Dictionary in competition with the wholly different and established Webster dictionaries of petitioner, well known in the market by that name.

Petitioner prays a review of this decision by *certiorari* upon the grounds that it is erroneous

and in direct conflict with the decision of the Circuit Court of Appeals for the First Circuit in the case of *Merriam v. Ogilvie*, 159 Fed. 638; 170 Fed. 167, and of the Sixth Circuit in *Merriam v. Salfield*, 198 Fed. 369, both of which cases were substantially similar to the case at bar, and in both of which petitioner's prior rights in the name Webster as applied to dictionaries was adjudicated and protected. The decision below is also indirect and irreconcilable conflict with controlling decisions of this Court, particularly in the cases of *Singer v. June Mfg. Co.*, 163 U. S. 169, and *Jacobs v. Beecham*, 221 U. S. 263. It is also inconsistent with a long line of authorities both in this country and in England, which are referred to in petitioner's accompanying brief. Respondent should have been enjoined from using the name "Webster's Dictionary" as the title of its book, or, at the very least, required to accompany that title with a plain statement unmistakably distinguishing its dictionary from those of petitioners.

The question involved in this suit is also involved in other like suits which petitioner now has pending in various Circuits, and some of which are, by stipulation, awaiting the final determination of this as a test suit.

It is of the utmost importance that one correct and uniform rule as to the effect of the expiration of copyright upon early editions of reference books be authoritatively established. If the decision below be permitted to stand, there will be a flood of disconnected and variant dictionaries of all sorts published under the denomination of Webster's Dictionary. Confusion, contradiction and the ultimate destruction of the literary reputation and authority of the present long estab-

lished Webster's Dictionary will inevitably and speedily result. The question is of general importance because it applies equally to all copyrighted works, particularly dictionaries, encyclopedias and other reference works, which go through many editions. It has also arisen in regard to the use of the name of patented articles after the patent has expired.

The rule upon this subject contended for by petitioner is as follows:

1. When the copyright expires upon any book entitled Webster's Dictionary, any one may publish a substantial reprint of the expired book under that title, because it is truthfully descriptive, but appropriate precaution must be taken to prevent confusion of editions and of publishers. This is the doctrine of the *Singer* case (163 Fed. 169) and of all the prior *Webster Dictionary* cases. (198 Fed. 369; 159 Fed. 638; 170 Fed. 167; 136 Fed. 477; 49 Fed. 944; 47 Fed. 411; 43 Fed. 450.)

2. Substantially new and different dictionaries, and *a fortiori* a distinct British dictionary of different name, may not be given the title Webster's Dictionary, because that name is not truthfully descriptive of such a book and necessarily confuses it with the current established book of that name. There is no honest need to use petitioner's established trade-name as the name of such a new and different book. It should be given a distinctive name of its own, though of course a truthful descriptive statement of any use actually made of the expired book in compiling the new book may be plainly printed upon the title page or elsewhere.

3. As respondent's dictionary is admittedly a substantial reprint of a British dictionary, and not even a substantial copy of any previous genuine Webster's dictionary, either expired or unexpired, respondent should have been enjoined from selling it under the title of Webster's Dictionary, because that is a false description of the identity of the book, and inevitably confuses it with petitioner's well known current Webster dictionaries. If it be true that respondent's book is based upon Webster's Dictionary of 1847, as alleged in the answer, a descriptive statement of that fact may properly be used in connection with respondent's book, but that fact does not justify respondent in using the words Webster's Dictionary as the principal title and market name of its book.

These rules are well supported by reason and authority, as appears from petitioner's accompanying brief. They deprive no member of the public of any right or advantage to which he is honestly entitled. They give the public the full benefit and unrestricted use of the literary property which has fallen into the public domain by reason of the expiration of copyright. They prevent deception of purchasers, and at the same time protect the proprietor in the good will and reputation of its current copyrighted dictionaries.

WHEREFORE your petitioner prays that a writ of *certiorari* may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain therein to be designated, a full and complete transcript of the record and all proceedings of said Court in

the said case therein entitled, *G. & C. Merriam Company, appellant, v. Syndicate Publishing Company, appellee*, No. 210, October Term, 1912, to the end that said case may be reviewed and determined by this Court as provided by law, and said decision and decree of the United States Circuit Court of Appeals for the Second Circuit may be reversed, and that a decree may be directed enjoining the respondent from using the name Webster, or Webster's Dictionary, as the whole or a part of the name or title of its said dictionary, or for such other and different relief as may be deemed just, and thus your petitioner will ever pray.

Dated, September 10th, 1913.

WILLIAM B. HALE,
Counsel for Petitioner.

UNITED STATES OF AMERICA, }
State of Massachusetts, } ss.:
County of Hampden, }

O. M. BAKER being duly sworn, deposes and says, that he is the president of G. & C. Merriam Company, the petitioner above named; that he is familiar with the facts and matters set forth in the said petition, and that the allegations of said petition are true as he verily believes.

O. M. BAKER

Subscribed and sworn to before me this 10th day of }
September, 1913. }

Charles S. Cleaver

Notary Public.

(Seal)

I hereby certify that I have examined the foregoing petition and that in my opinion the said petition is well founded in point of law and that the same is not interposed for delay, and that the case is one in which the prayer of the petitioner should be granted.

Dated, September 10th, 1913.

WILLIAM B. HALE,
Counsel for Petitioner.

217
No. ~~644~~

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SEP 22 1913

JAMES H. MCKENNEY

IN THE
Supreme Court of the United States,
OCTOBER TERM, A. D. 1913.

G. & C. MERRIAM COMPANY,

Petitioner,

vs.

SYNCRATE PUBLISHING COMPANY,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.

WILLIAM B. HALE,

Counsel for Petitioner,

40 Wall Street,

New York City.

TABLE OF CONTENTS.

I.	viii
Importance of the case to the Supreme, the public, and the public.	1
II.	
Summary of established rules applicable to case at law.	2
III.	
Various Dictionary Decisions.	17
IV.	
Doctrine of the Supreme Court in the Singer and other like cases.	20
V.	
Conclusion.	25

LIST OF CASES CITED.

Allen v. Folger, 125 Fed. 255	26
Allgeault, etc., Co. v. Fisher, 52 Fed. 222	26
American Tobacco Co. v. Williams, 175 Fed. 107, 108	7
American Wheel Co. v. U. S. Wheel Co., 175 Mass. 22; 20 N. E. 101; 20 L. R. B. 105; 75 Am. D. Rep. 203	26
Dorman v. Dickinson, 20 Fed. 72; 10 L. R. B. 238	26
Hill Mfg. Co. v. Street & Smith, 204 Fed. 272	26

Baglin <i>v.</i> Cusenier Co., 221 U. S. 580; 31 Sup. Ct. Rep. 669	13, 44, 50
Baker Chocolate cases, 87 Fed. 209 (C. C. A.), 130 Fed. 514	8
Baker, Walter, & Co. <i>v.</i> Baker, 87 Fed. 209	11, 12
Baker, Walter, & Co. <i>v.</i> Sanders (C. C. A.), 80 Fed. 895	9, 11, 12, 16
Baker, Walter, & Co. <i>v.</i> Slack, 130 Fed. 514	11
Bell <i>v.</i> Locke, 8 Paige Ch. (N. Y.) 75	47
Bates Mfg. Co. <i>v.</i> Bates Numbering Ma- chine Co., 172 Fed. 892	6, 7
Bissell Chilled Plow Works <i>v.</i> T. M. Bissell Plow Co., 121 Fed. 357	8, 10, 11
Black <i>v.</i> Ehrich, 44 Fed. 793	23, 40
Borthwick <i>v.</i> Evening Post, L. R. 37 Ch. Div. 449	47
Canal Co. <i>v.</i> Clark, 13 Wall. (U. S.) 311 ..	15
City of Carlsbad <i>v.</i> Kutnow, 68 Fed. 794 ..	15
Centaur <i>v.</i> Heinsfurter, 84 Fed. 956	40, 43
Centaur Co. <i>v.</i> Killenberger, 87 Fed. 725 ..	43
Centaur Co. <i>v.</i> Neathery (C. C. A.) 91 Fed. 891	43
Clark Thread Co. <i>v.</i> Armitage, 67 Fed. 896.	6
Clark Thread Co. <i>v.</i> Armitage (C. C. A.) 74 Fed. 936, Aff'g. 67 Fed. 896	11
Collinsplatt <i>v.</i> Finlayson, 88 Fed. 693	15
Corbett <i>v.</i> Purdy, 80 Fed. 901	40
Dicks <i>v.</i> Yates, 18 Ch. Div. 90	47, 49
Elgin National Watch Co. <i>v.</i> Loveland, 132 Fed. 41	15

III

	PAGE
Elgin Watch Co. <i>v.</i> Illinois Watch Co., 179 U. S. 665	7, 16, 38
Estes <i>v.</i> Belford Clark Co., 30 Off. Gaz. 99.	48
Estes <i>v.</i> Leslie, 27 Fed. 22	47
Estes <i>v.</i> Williams, 21 Fed. 189	47
Estes <i>v.</i> Worthington, 22 Fed. 822; 30 Fed. 465; 31 Fed. 154	47
Fairbank N. K. Co. <i>v.</i> R. W. Bell Mfg. Co., 77 Fed. 869	10
French Republic <i>v.</i> Saratoga Vichy Springs Co., 191 U. S. 427	7, 16
Gannert <i>v.</i> Ruppert, 119 Fed. 221	46
Hall's Safe Co. <i>v.</i> Herring Safe Co., 146 Fed. 37; 76 C. C. A. 495; 14 L. R. A. (N. S.) 1182	34
Hansen <i>v.</i> Siegel Cooper Co., 106 Fed. 691	11
Harper <i>v.</i> Holman, 84 Fed. 224	46
Harper <i>v.</i> Lare, 103 Fed. 203	47
Harper <i>v.</i> Ranous, 67 Fed. 904	40
Herring-Hall-Marvin Safe Co. <i>v.</i> Hall Safe Co., 208 U. S. 554; 28 Sup. Ct. 350; 52 L. D. 616	8, 16, 34, 38
Hoffman <i>v.</i> B. Kuppenheimer, 183 Fed. 597	39
Hogg <i>v.</i> Kirby, 8 Ves. 215	46
Hohner <i>v.</i> Gratz, 52 Fed. 871	15
International Silver Co. <i>v.</i> Rogers, 110 Fed. 958	11
"Iolanthe," The case, 15 Fed. 439	46
Jacobs <i>v.</i> Beecham, 221 U. S. 263; 31 Sup. Ct. Rep. 555	15, 43, 50
Jaffe <i>v.</i> Evans, 70 App. Div. (N. Y.) 190 ..	15, 42

IV

	PAGE
Janney <i>v.</i> Pancoast Ventilator, etc., Co. 128 Fed. 121	15, 39
Johnson <i>v.</i> Seaman (C. C. A.) 108 Fed. 951	39
Lare <i>v.</i> Harper, 86 Fed. 481	47
Liebig's Extract of Meat Co. <i>v.</i> Libby, McNeill & Libby, 103 Fed. 87	15
Liebig's Extract of Meat Co. <i>v.</i> Liebig Ex- tract Co. (C. C. A.) 180 Fed. 688 . . . 8,	15, 45
Ludlow Valve Mfg. Co. <i>v.</i> Pittsburgh Mfg. Co. (C. C. A.) 166 Fed. 26	16, 40
Matsell <i>v.</i> Flanagan, 2 Abb. Pr. (N. S.) N. Y. 459	47
Metzler <i>v.</i> Wood, 8 Ch. Div. 606; 47 L. J. Ch. 625; 33 L. T. N. S. 541; 26 W. R. 577	48, 49
Merriam <i>v.</i> Famous Shoe & Clothing Co. (Webster Dictionary case), 47 Fed. 411	9, 20, 23, 24, 25, 39, 40
Merriam <i>v.</i> Holloway Pub. Co. (Webster Dictionary case), 43 Fed. 450 . . . 17, 23, 39, 40	
Merriam <i>v.</i> Ogilvie (Webster Dictionary case), 149 Fed. 858; 159 Fed. 638; 170 Fed. 167	28, 45
Merriam <i>v.</i> Saalfeld (Webster Dictionary case) (C. C. A.) 190 Fed. 927; 198 Fed. 369	16, 36, 48
Merriam <i>v.</i> Strauss (Webster Dictionary case), 136 Fed. 477	26
Merriam <i>v.</i> Texas Siftings Pub. Co. (Web- ster Dictionary case), 49 Fed. 944 . . 22, 39, 40	
Meyer <i>v.</i> Bull, 58 Fed. 884.	11, 13
Montgomery <i>v.</i> Thompson (1891) App. Cas. 217; 64 L. T. N. S. 749	11, 14

	PAGE
National Distilling Co. <i>v.</i> Century Liquor & Cigar Co. (C. C. A.) 183 Fed. 206.	15
Ogilvie, Merriam <i>v.</i> (Webster Dictionary case), 149 Fed. 858; 159 Fed. 638; 170 Fed. 167.....	28, 45
Oxford University <i>v.</i> Wilmore-Andrews Pub. Co., 101 Fed. 443.....	11, 46
Palmer's Trade-Mark, in <i>re</i> , L. R. 24 Ch. Div. 504.....	39
Pillsbury Washburn Flour Mills Co. <i>v.</i> Eagle (C. C. A.) 86 Fed. 608	8, 15
Pinet <i>v.</i> Maison Pinet, 14 Rep. Pat. Cas. 933; 15 Rep. Pat. Cas. 65.....	15
Powell <i>v.</i> Birmingham Vinegar Brewery Co. (1896), 2 Ch. 54, 68; (1897) App. Cas. 710; 14 R. P. C. 720 (Yorkshire Relish)	10
Reddaway <i>v.</i> Banham (1896), App. Cas. 199.....	6, 8, 11, 38
Reed Cushion Shoe Co. <i>v.</i> Frew (C. C. A.) 162 Fed. 887.....	8, 11, 13, 16
Rowley <i>v.</i> J. F. Rowley Co. (C. C. A.) 161 Fed. 94.....	8, 9
Royal Baking Powder Co. <i>v.</i> Royal, 122 Fed. 337.....	15
Saalfeld, Merriam <i>v.</i> (Webster Dictionary case), 190 Fed. 927; 198 Fed. 369. 16, 36, 48	
Shaver <i>v.</i> Heller (C. C. A.) 108 Fed. 821. 8, 11, 14	
Shook <i>v.</i> Wood, 10 Phila. (Pa.) 373.....	39, 47
Singer Mfg. Co. <i>v.</i> Hipple, 109 Fed. 152. 15, 41	
Singer Mfg. Co. <i>v.</i> June Mfg. Co., 163 U. S. 169; 16 Sup. Ct. 1002; 41 L. Ed. 118	16, 25, 34, 39, 40, 42

	PAGE
Smail <i>v.</i> Sanders, 118 Ind. 105; 20 N. E. Rep. 296	15
Social Register Assn. <i>v.</i> Howard, 60 Fed. 270	46
Thomas <i>v.</i> Lennon, 14 Fed. 849	46
Vitascope <i>v.</i> U. S. Phonograph Co., 83 Fed. 30	39
Waterman, L. E., Pen Co. <i>v.</i> Modern Pen Co. (C. C. A.) 197 Fed. 534; (C. C. A.) 183 Fed. 118	8
Weldon <i>v.</i> Dicks, 10 Ch. Div. 247	47
Williams <i>v.</i> Mitchell (C. C. A.) 106 Fed. 168	11, 12
Wotherspoon <i>v.</i> Currie, L. R. 5; H. L. 508	8, 11, 38
"Yorkshire Relish" case, 14 R. P. C. 720, 727	10

IN THE
Supreme Court of the United States,
OCTOBER TERM, A. D. 1913.

G. & C. MERRIAM COMPANY,
Petitioner,

VS.

SYNDICATE PUBLISHING COM-
PANY,
Respondent.

**BRIEF IN SUPPORT OF PETITION FOR
CERTIORARI.**

I.

IMPORTANCE OF CASE TO THE LITIGANTS, THE
TRADE AND THE PUBLIC.

The facts set out in the accompanying petition were abundantly established by the proofs, and were either found or assumed by the court below as the basis of its decision. The controlling question presented here is purely one of law. Obviously this case is of vital importance to the petitioner in that its entire business is inseparably and completely based upon, and identified by, the word "Webster". All its dictionaries are known as Webster's dictionaries and have been known, bought and sold, and become a standard authority of great reputation only under the name of "Web-

ster". Petitioner is not claiming any monopoly after expiration of copyright. It seeks merely protection for its current copyrighted Webster dictionaries of established reputation against unfair and fraudulent competition. Petitioner acquiesces in the prior rulings of the courts allowing other publishers to utilize the title "Webster's Dictionary" whenever the literary contents of the book is a reproduction, or a reprint, of a genuine Webster Dictionary upon which the copyright has expired,—that is, whenever the use of that title is a truthful use. It merely claims that in such a case the name must be accompanied by some proper announcement indicating the new origin of the book, and distinguishing such reproduction of an obsolete edition from the current modern editions to which that name has been transferred and applied by the public. But that is not this case. The decision dismissing the bill permits respondent to apply the name "Webster's Dictionary" to a book which never before bore that name, and which is radically different from the books of that name upon which the copyright has expired, and also radically different from the books known by that name to the present generation upon which the copyright has not expired. If the word "Webster" is now declared to be a word *in gross* which may be bestowed as a name upon any dictionary containing any literary matter whatsoever, and published by any person, widespread deception of the public will result, and petitioner will be deprived, after consistent, logical and profound work of the most eminent scholars for over half a century upon the Webster series, of the deserved reward of its labors. Against the assaults of books with new liter-

ary and mechanical origin, and with new or different literary contents, the reputation of the Webster dictionaries is doomed, and its complete destruction is inevitable. For example, in the present case, the respondent has imported the British Empire Dictionary, and dropping that name, now offers it to the public as Webster's New Standard Dictionary. In a case now pending in the Sixth Circuit, brought by petitioner against one Saalfeld, the defendant imported another British dictionary called Chambers' Twentieth Century Dictionary, and dropping that name, offers it to the public of this country as a Webster's Dictionary. In three suits now pending in the Seventh Circuit brought by petitioner against W. B. Conkey, Charles C. Thompson Co. and M. A. Donohue & Co., respectively, the defendants have each imported an English book entitled Blackie's Shilling Dictionary and are now offering to the public a photographic reprint of it as Webster's Dictionary. The decision below encourages the continuation and repetition of such frauds. A tremendous amount of litigation is pending, which it is important to petitioner and other litigants that it be determined as expeditiously and inexpensively as possible. A decision of the ultimate tribunal establishing once and for all the exact rights of petitioner and the public in the word "Webster" as applied to dictionaries, will practically terminate all this pending litigation, and will render further litigation unnecessary.

Again the book trade is interested both as a concrete proposition in reference to the word "Webster", and as a general proposition in reference to titles of books upon which the copyright

has expired, in the determination of the rule to be hereafter applied to new editions, and in the final settlement of the question as to whether the name of a book can be, after expiration of copyright, used competitively upon any book by anybody under any and all circumstances, or whether the use of the name must not be limited to a truthful use upon reproductions or reprints of the original book, and whether or not even such use, truthful in only one sense, must not be accompanied by affirmative precautions so as to make it truthful in every sense. The principle involved is equally applicable to cases involving expired patents. The final determination of the question whether the expiration of a patent justifies rival manufacturers in applying the name of the patented article to other articles not made in accordance with the expired patent, is also of vast importance to manufacturers throughout the country, and has actually arisen.

The Webster dictionaries are works of national importance, of universal adoption and use in the public and private schools of the country, and every American who is interested in the growth and development of the English language, and its consistent and logical advance, and every educator in the country, is directly concerned in keeping the Webster dictionaries intact as a series and in not permitting miscellaneous works, having no literary or commercial connection with the established Webster series, to be designated by a name which falsely represents them in the public mind as belonging to that series and coming from the same source, whereas they will emanate from any and every source.

A sound public policy should encourage the

producers of standard reference works, such as the Webster Dictionary of petitioner, to improve and develop them, and keep them abreast with the times, by securing to them the just rewards of the good will established by their enterprise and scholarship. There will be no incentive to produce revised and improved works if the good will acquired by merit may be appropriated by the first unscrupulous publisher who sees a profit in it.

All of these questions are of such importance, both public and private, as to justify a review and final determination by this Court.

II.

SUMMARY OF ESTABLISHED RULES APPLICABLE TO CASE AT BAR.

The defense herein asserts, and the dismissal of the bill herein sanctions, an unrestricted and unconditional right to use the words, "Webster's Dictionary," because petitioner has no *exclusive* right to the use of those words. Petitioner rejoins that an exclusive proprietary right is unnecessary to relief against a fraudulent manner of using even common terms like the adjectives of the language. It is fully admitted that the title of a book is not a technical trade-mark for that book, because essentially descriptive of it; and it is fully admitted that the expiration of the copyright upon a book authorizes any one to reprint that book and use its familiar title upon such reprint. Petitioner has and claims no exclusive right in the name Webster's Dictionary as against those who use it

truthfully and honestly. But against a dishonest, untrue, and deceptive mode of using that name, petitioner is entitled to complain by reason of its long prior appropriation and user thereof, and the application of it by the public to petitioner's current dictionaries.

The whole law of unfair competition is based upon the principle of business morality that one person will not be permitted to pass off his goods as those of another who has succeeded in establishing a reputation for the quality of his goods. The reason for the rule is that the reputation and good-will which a particular proprietor succeeds in establishing for his own goods and methods of dealing are his property,¹ and are entitled to protection as any other property.² The means by which one man's goods are passed off as those of another are wholly immaterial, because it is unlawful to produce that result by any means.³ "Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol. It may arise from the

¹Coxe, *J.*, said in *Clark Thread Co. v. Armitage*, 67 Fed. 896, 900: "The demand is for the complainant's thread, and, though other thread is used to a limited extent, it is not too much to say that in certain localities the market belongs to the complainant. I has taken capital, industry and years of arduous endeavor to produce this result. If the complainant had not dealt honestly with the public it would not be in this position today. Its success is due to the fact that for a generation it has furnished an article in which the people had faith. This good will is the complainant's inheritance and its property. It is as much a part of its assets as its mill or its counting house. No one has a right to destroy it except by fair and honest competition. No other manufacturer has a right to take away the complainant's customers by inducing them to believe that they are purchasing the complainant's goods."

²*Reddaway v. Banham*, [1896] App. Cas. 199.

³"Equity does not concern itself as to what the means, how, or with what intent they are used, if the result is fraud, and, if the public are induced thereby to purchase the goods of one under the belief that they are those of another, such means will be enjoined." *Bates Mfg. Co. v. Bates Numbering Machine Co.*, 172 Fed. 892, 895.

use of words, etc., which everybody may use. The question is whether what is done in a special case tends to pass off the goods of one for those of another, or tends to deprive such other of his rights."¹

The exclusiveness or non-exclusiveness of a complainant's right in a trade name used by another as the instrument of harm merely affects the form of the relief which will be granted. If the right be exclusive, as in the case of technical trade-marks, an absolute unqualified injunction will be granted and use in any form will be enjoined. If the right be not exclusive, as in the case of generic, geographical, or personal names, the injunction will merely regulate the defendant's manner of using the trade-name so as to prevent deception. The court will then prohibit any untrue, unnecessary, or inappropriate manner of use which unduly injures the complainant, and will require the defendant to adopt reasonable precautions to prevent confusion and consequent damage, but will leave him at liberty to use the word in any manner which is honest and fair and not calculated to deceive the public. These rules are well established and have been often applied.

Thus, although no one can acquire an exclusive right in a geographical name, such a name may acquire a trade significance, termed "a secondary meaning", which will be protected by injunction against any misleading manner of use by a rival trader. *French Republic v. Saratoga Vichy Springs Co.*, 191 U. S. 427, ("Vichy"); *Elgin Watch Co.*

¹*Bates Mfg. Co. v. Bates Numbering Machine Co.*, 172 Fed. 892, 895. See also *American Tobacco Co. v. Polacsek*, 170 Fed. 117, 121.

v. *Illinois Watch Co.*, 179 U. S. 665 ("Elgin Watches"); *Shaver v. Heller*, (C. C. A.) 108 Fed. 821, 832, ("American Ball Blue"); *Pillsbury Washburn Flour Mills Co. v. Eagle*, (C. C. A.) 86 Fed. 608, ("Minneapolis Flour"); *Wotherspoon v. Currie*, L. R. 5, H. L. 508, ("Glenfield Starch").

The same rule applies to the use of personal names. No one has an exclusive right to the use of his own name against as another person of the same name. But the right to use one's own name is not superior to the obligation of using it honestly, and so as not unduly to injure another, and injunctions are, therefore, often granted regulating a man's use of his own name, and prohibiting its use in such a manner as to confuse his goods with those of another in the public mind. *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S. 554, ("Hall's Safes"); "*Baker Chocolate cases*", 87 Fed. 209, (C. C. A.) 130 Fed. 514; *Bissell Chilled Plow Works v. T. M. Bissell Plow Co.*, 121 Fed. 357 ("Bissell Plows"); *Rowley v. J. F. Rowley Co.* (C. C. A.) 161 Fed. 94 ("Rowley Legs"); *Reed Cushion Shoe Co. v. Frew*, (C. C. A.) 162 Fed. 887, ("Reed Cushion Shoe"); *L. E. Waterman Pen Co. v. Modern Pen Co.* (C. C. A.) 197 Fed. 534; (C. C. A.) 183 Fed. 118; *Liebig's Extract of Meat Co. v. Liebig Extract Co.*, (C. C. A.) 180 Fed. 688. In fact, even generic descriptive words, such as "Camel's Hair Belting", will be protected by injunction where they have acquired a trade significance, and defendant's manner of using them is deceptive, unfair, or dishonest. *Reddaway v. Banham*, (1896) App. Cas. 199, which has been repeatedly cited with approval in many American cases.

The degree of restraint in any particular case is always commensurate with the necessities of the situation and what commercial morality and fair business dealing may dictate. It depends upon "the exact nature of the injury and the causes that mislead the public."¹ In reconciling the rights of the parties in cases of this kind² so as to permit the defendant to make every proper and honest use of a common term, and at the same time to prevent a misuse of the term unduly and unnecessarily damaging to the prior trader, who first gave the name a value and a significance in the trade, the courts have formulated certain rules which safeguard complainant's rights and yet work no hardship to an honest defendant.³ These rules merely express and enforce the general principle that all men must so use their own as not unnecessarily to damage their neighbor. They are as follows:

(a) The subsequent trader may not use the same name as the market title or short name of his goods, but may use it only in a descriptive manner to announce a fact which he is entitled to state.

(b) The name must be used truthfully by the subsequent trader, or he may not use it at all.

(c) Where the name is necessarily and truthfully used in any sense, it must be accompanied by an explanation sufficient clearly and unmistakably to distinguish defendant's goods from those of complainant.

¹Per Thayer, J., in *Merriam v. Famous, etc. Co.*, 47 Fed. 415.

²*Rowley v. J. F. Rowley Co.* (C. C. A.), 161 Fed. 94.

³Per Lacombe, J., in *Allegretti, etc. Co. v. Keller*, 85 Fed. 643, citing *Baker v. Sanders* (C. C. A) 80 Fed. 895.

Rule I: Use as Short Title Prohibited.

Obviously, where a certain word or phrase has become the short name or market title of one person's goods, the use of the same short name for the similar goods of a rival trader is necessarily deceptive.

"Unless you can defend yourself on the ground that what you are selling is the thing that acquired the name, what possible ground can you have for saying that you are not passing off your thing as his, when you are giving it the name which his goods have borne up to that date?"¹

Therefore, in regulating a defendant's use of such words, equity will not permit him to use them for the purpose of making them also the designating title or name of his goods², but *will confine him to a descriptive manner of use*, which will convey only the meaning he is entitled to convey and will not at the same time suggest that his goods are those of the complainant. This rule has been adopted and enforced in many cases

¹ Per Lord Herschell, in the House of Lords. "*Yorkshire Relish*" case, 14 R. P. C. 720, 727.

² This rule is well stated in the *Bissell Plow* case, 121 Fed. 357, 366, where the court said: "The law has gone further than this, and prescribed a rule by which it can be determined whether what is done by the rival trader is calculated so to deceive such purchasers. That rule is that if what is done by such trader causes his goods to be known in the trade by the same name by which such other goods are already known therein, it is calculated to deceive such purchasers. . . . If, then, the use of any mark that will cause such an effect is an infringement of a technical trade-mark, it would seem to follow that, where no such trade-mark is involved, if what the second comer does in relation to his goods or business will have such an effect, it amounts to unfair competition. As in the other case, it causes his goods to be known in the market by the same name by which the first comer's goods are already known, and hence is calculated to deceive purchasers into buying his goods for that trader's goods, which is the test of unfair competition, as well of infringement of a technical trade-mark. And it has been so held." See also *N. K. Fairbank Co. v. R. W. Bell Mfg. Co.*, 77 Fed. 869.

and is well established. It applies to the use of one's own proper name,¹ to geographical names,² and to generic names.³ All of these classes of names may be used by any one in proper manner to tell the truth about his own goods, but when they have acquired a secondary meaning in association with one man's goods they may not be used by a subsequent trader in such fashion as to make them the short name or title by which his goods are bought and sold in the market, because that manner of use would be deceptive. In other words, while the truth may be told, it must be told in a wholly truthful manner.⁴

Under this doctrine, the defendant in this case would be permitted to say that its "British Empire Dictionary", or "Crown Dictionary" was "based upon Webster's Dictionary of 1847", *if that were the truth*, but it should not be permitted to announce on the wrapper, cover, back or title page of the book, or in advertisements, that its "British Empire Dictionary" or "Crown Dictionary" is in fact *the* "Webster's Dictionary". That is what defendant is doing, and claims the right to do.

¹*Clark Thread Co. v. Armitage* (C. C. A. 2nd Cir.) 74 Fed. 936; *affirming* 67 Fed. 896; *Walter Baker & Co. v. Baker*, 87 Fed. 209; *Walter Baker & Co. v. Sanders* (C. C. A. 2nd Cir.) 80 Fed. 889; *Walter Baker & Co. v. Slack*, 130 Fed. 514; *Bissel Plow Case*, 121 Fed. 357; *International Silver Co. v. Rogers*, 110 Fed. 958 (Roger's Silver Ware); *Reed Cushion Shoe case* (C. C. A. 2nd Cir.) 162 Fed. 887; *Meyer v. Bull*, 58 Fed. 884 ("Bull's Cough Syrup").

²*Oxford University v. Wilmore-Andrews Pub. Co.*, 101 Fed. 443 ("Oxford Bibles"); *Shaver v. Heller* (C. C. A.) 108 Fed. 821 ("American Ball blue"); *Montgomery v. Thompson*, (1891) App. Cas. 217, 64 L. T. N. S. 749 ("Stone Ale"); *Wotherspoon v. Currie*, L. R. 5 H. L. 508, ("Glenfield Starch").

³*Roddaway v. Banham* [1896] App. Cas. 199 ("Camel's Hair Belting"); *Hansen v. Siegel Cooper Co.*, 106 Fed. 691 ("Junket Tablets"); *Williams v. Mitchell*, (C. C. A.) 106 Fed. 168 ("Carrom Board").

⁴*Dr. A. Reed Cushion Shoe Co. v. Frew* (C. C. A. 2nd Cir.) 162 Fed. 887.

In *Walter Baker & Co. v. Baker*, 87 Fed. 209, 210, the court said:

"The well-known *short* name by which the public styles the article of the complainant is 'Baker's Chocolate', and thus the public regards what is presented under that name as the complainant's article, and associates the name with a particular factory of long existence and permanence. The defendant has a right to manufacture chocolate, and to acquire his own reputation under his own name, but not to use the name so as to deceive the purchaser. When he presents his article as 'W. P. Baker's Chocolate', he not only improperly works mischief to the preexisting manufacturer, but he wrongs the public. . . .

"So long as the title contains the words which in the trade and among consumers have come to be the every day designation of complainant's goods, the chocolate so labeled will naturally be assumed to be complainant's, unless special care be taken to indicate that it is not." Citing *Walter Baker & Co. v. Sanders*, 80 Fed. 889.

In *Williams v. Mitchell* (C. C. A.) 106 Fed. 168, complainant's game-board became known by the designation "Carrom Board." The Circuit Court of Appeals said (p. 171):

"The defendants may not rightfully apply that name to their game *as a designation or name of the game*, although they have a right, as the court below decreed, to use the word *in descriptive portions of advertisements so long as they use them in a purely and properly descriptive sense.*"

This is precisely the rule which should govern defendant's use of the name "Webster" in connection with its different dictionaries.

If defendant's dictionary were "based upon"

Webster's Unabridged Dictionary of 1847, that fact might be stated in the form in which it was stated upon the title page of the Crown Dictionary.¹ Such a manner of use could not deceive anyone as to the identity of defendant's book. But where, instead of stating "the whole truth and no less", as respondent was bound to do,² respondent simply entitles its book "Webster's New Standard Dictionary", everyone is likely to be deceived. The use of such a title does not tell what respondent may be entitled to tell, but it does imply and tell an untruth in the sense in which it will be understood by practically the whole public and in which it was plainly intended by the respondent to be understood. One of the best illustrations of the proper form of decree in this class of cases is the one directed by Mr. Justice Harlan and Judge Wood in *Meyer v. Bull*, (C. C. A.) 58 Fed. 884, 886, set out below.³ A similar injunction was directed by this court in the *Chartreuse* case, *Baglin v. Cusenier Co.*, 221 U. S. 580, as follows:

"From using the word 'Chartreuse'
 . . . as the name of, or as descriptive

¹ See Exhibit "Crown Dictionary."

² *Dr. A. Reed Cushion Shoe Co. v. Frew* (C. C. A., 162 Fed. 887.

³ That an injunction issue herein perpetually restraining the defendant, its servants and agents, and all persons in privity with it, from manufacturing and from selling, and from in any manner offering to sell, and from distributing and from in any way disposing of any remedy or preparation to which shall be applied in any form or manner, as the name and designation thereof, the words, 'Dr. B. L. Bull's Cough Syrup', or the words 'Bull's' and 'Cough Syrup', with or without other words, . . . and from in any other form or manner using any name or designation which is calculated to cause its article to be known in the market and sold under the name of complainant's article, or as 'Bull's Cough Syrup'. But the writ of injunction thus to be issued shall not (except as to the name or part of the name thereof, as aforesaid) prohibit the defendant from in every fair and lawful manner stating in the wrappers or labels by it used and otherwise that its article is by it manufactured and sold, and from so fairly and lawfully stating any other fact which it may elect or desire to state."

of, such liqueur or cordial, *or* without clearly distinguishing such liqueur or cordial from the liqueur or cordial manufactured by the complainants."

The argument that respondent has a right to use the title "Webster's New Standard Dictionary" to notify the public that its book is based upon a dictionary of Noah Webster is precisely answered by the Circuit Court of Appeals for the 8th Circuit in *Shaver v. Heller*, (C. C. A.) 108 Fed. 821, 824, where the defendant claimed the right to designate its goods "American Ball Blue" to indicate that they were made in America. The two answers given there are equally conclusive here: (1) An injunction against the use of the name *in the title* will not prohibit the use of the name for the purpose of telling any fact about the book, and (2) the respondent neither needs nor seeks to use the name Webster in its title for this purpose. The same answers were indicated in the "Stone Ale" case¹ where complainant's ale, brewed at the village of Stone, had become known as "Stone Ale". Lord Hannen said:—

"The appellant is undoubtedly entitled to brew ale at Stone, and to indicate that it was manufactured there, but there are various means of stating that fact without using the name which has now become the designation of the respondent's ale."

Rule II: Untruthful Use Prohibited.

Truth is the only possible justification for any use of a confusing name by a newcomer into the market. No trade pirate has ever attempted to appropriate the trade rights of another without at

¹*Montgomery v. Thompson*, (1891) App. Cas. 217.

least some colorable and alleged truthful reason for using the term sought to be appropriated. It is quite true that everyone may use his own name in his business because such use is truthful and necessary; but when the name is not defendant's true name, and has been assumed merely for the purpose of competition, an entirely different question is presented. In such cases, the name must not be employed at all.¹ It is also abundantly settled by authority that the courts will not tolerate a false use of a geographical name, when it is so used to promote unfair competition, and to induce the sale of spurious goods.² Likewise a false use of generic descriptive words will be enjoined.³ Accordingly respondent's false use of the name "Webster's Dictionary" to indicate its reprint of the "British Empire Dictionary" should have been enjoined.

Rule III: Adequate Explanatory Statements Required.

Where a defendant's use of a name may not be absolutely enjoined because its use by defendant is truthful and reasonably necessary, defend-

¹*Royal Baking Powder Co. v. Royal*, 122 Fed. 337, 343, per Lurton, J.; *National Distilling Co. v. Century Liquor & Cigar Co.* (C. C. A. 6th Cir.) 183 Fed. 206; *Hohner v. Gratz*, 52 Fed. 871; *Liebig's Extract of Meat Co. v. Libby, McNeill & Libby*, 103 Fed. 87, 90; *Pinet v. Maison Pinet*, 14 Rep. Pat. Cas. 933; 15 Rep. Pat. Cas. 65; *Smail v. Sanders*, 118 Ind. 105, 20 N. E. Rep. 296.

²*Collinsplatt v. Finlayson*, 88 Fed. 693, per Lacombe, J.; *Pillsbury-Washburn Flour Mills Co. v. Eagle*, 86 Fed. 608; *Canal Co. v. Clark*, 13 Wall. (U. S.) 311, 326; *Elgin National Watch Co. v. Loveland*, 132 Fed. 41; *City of Carlsbad v. Kutnow*, 68 Fed. 794.

³*Singer Mfg. Co. v. Hipple*, 109 Fed. 152 ("Singer Sewing Machine"); *Jaffe v. Evans*, 70 App. Div. (N. Y.) 190 ("Lanoline"); *Liebig's Extract of Meat Co. v. Liebig Co.* (C. C. A., 2nd Cir.) 180 Fed. 688, 690 ("Liebig's Process"); *Janney v. Pancoast Ventilator, etc., Co.*, 128 Fed. 121 ("Pancoast Ventilators"); *Jacobs v. Beecham*, 221 U. S. 263 ("Beecham's Pills").

ant must accompany his use of the name with an affirmative explanatory statement adequate clearly and unmistakably to distinguish his goods from those of the prior trader. A use of the bare name, without such explanatory statement amounts to an artifice intended and sufficient to deceive, and will, therefore, be enjoined as fraudulent. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Merriam v. Saalfeld*, 198 Fed. 369.

The courts are stringent in their requirements of plain, adequate and unmistakable distinguishing statements in this class of cases, as will appear from the following cases, containing judicially approved forms of distinguishing statements which defendants have been required by injunction to use: *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Elgin Nat'l Watch Co. v. Illinois Watch Co.*, 179 U. S. 665; *Herring-Hall-Marvin Safe Co. v. Hall Safe Co.*, 208 U. S. 554; *French Republic v. Saratoga Vichy Co.*, 191 U. S. 427; *Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co.* (C. C. A.), 166 Fed. 26; *Dr. A. Reed Cushion Shoe Co. v. Frew* (C. C. A.) 162 Fed. 887; *Allegretti, etc., Co. v. Keller*, 85 Fed. 643; *Baker v. Sanders* (C. C. A.), 80 Fed. 889, 895.

The refusal of the court below to at least require respondent to use an adequate distinguishing statement is contrary to the settled doctrine of this court, and to the uniform decisions of other circuits.

III.

WEBSTER'S DICTIONARY DECISIONS.

Petitioner's paramount, though not exclusive, rights in the name "Webster" have been many times judicially declared, and its right to protection adjudged.

Merriam v. Holloway, 43 Fed. 450, was the first of a series of cases involving petitioner's rights in the word "Webster" as applied to dictionaries. This suit was brought in the year 1890, at a time when the doctrine of unfair competition, as distinguished from the law of technical trade-marks, was just beginning to be recognized. The name unfair competition had not yet been applied to this branch of law, and the bench and bar still spoke largely in the language of trade-marks. The copyright upon the 1847 edition of Webster's Dictionary had then recently expired. Complainant had been publishing for many years the 1864 edition of Webster's Dictionary. Defendant undertook to publish and sell a *photolithographic copy of the 1847 edition*, calling it simply Webster's Dictionary. Complainant filed a bill for an injunction upon the ground that defendant was selling the expired 1847 edition as and for complainant's copyrighted 1864 edition, and that the public were deceived. An exclusive trade-mark right in the title Webster's Dictionary was claimed. A general demurrer was overruled by Mr. Justice Miller, sitting at circuit. Speaking of the right to publish the expired copyright book under the name of Webster's Dictionary, Justice Miller said:

"I want to say, however, with reference to the main issue in the case, that it occurs

to me that this proceeding is an attempt to establish the doctrine that a party who has had the copyright of a book may continue that monopoly indefinitely, under the pretense that it is protected by a trade-mark, or something of that sort. I do not believe in any such doctrine, nor do my associates. When a man takes out a copyright, for any of his writings or works, he impliedly agrees that, at the expiration of that copyright, such writings or works shall go to the public and become public property. . . . If a man is entitled to an extension of his copyright he may obtain it by the mode pointed out by law. The law provides a method of obtaining such extension. The copyright law gives an author or proprietor a monopoly of the sale of his writings for a definite period, but the grant of a monopoly implies that after the monopoly has expired the public shall be entitled ever afterwards to the unrestricted use of the book.

“There is some hesitation among my brethren and myself, as above indicated, whether, taking the bill as a whole, and considering all of its averments, a general demurrer ought to be sustained. The defendants use the words ‘Webster’s Dictionary,’ or ‘Webster’s Unabridged Dictionary,’ placed in the same relation to their publication that the complainants place it. The date of defendants’ publication on the title-page is given as of the year 1890, when, in point of fact, *the books that they are publishing is a reprint or a photo-lithographic copy of the edition of Webster’s Dictionary of 1847.* The defendants also use the device of an open book on advertisements and circulars, relating to their publication, as before alluded to. Now, taking all of these allegations

together, *there may be some evidence of a fraudulent intent on defendants' part to get the benefit of the reputation of the edition of Webster's Dictionary which the complainants are publishing*, and it may possibly be that, in consequence of the facts averred, the public are deceived, and that the complainants are damaged to some extent. We think, therefore, that this is one of those cases, as the facts are stated in the complaint, where the interests of justice would be best subserved by requiring the defendants to answer, so that there may be a full and fair investigation of the law and the facts upon a final hearing.

"The demurrer in this case, as we understand it, is not to special portions of the bill, or particular allegations, but goes to the whole bill, and asserts that it contains no averments warranting equitable relief of any sort. We are unable, at this time, to fully assent to that view; but, at the same time, we do not wish to be understood as declaring definitely that the complainant is entitled to equitable relief. I will say this, however, that the contention that complainants have any special property in 'Webster's Dictionary' is all nonsense, since the copyright has expired. What do they mean by the expression 'their book,' when they speak of Webster's Dictionary? It may be their book if they have bought it, as a copy of Webster's Dictionary is my book if I have bought it. But in no other sense than that last indicated can the complainants say of Webster's Dictionary that it is their book."

The doctrine of this case is that the name "Webster's Dictionary" is not a trade-mark, and that complainant has no special property in the book upon which the copyright has expired; that the

name Webster's Dictionary may be used by anyone *as the name of a genuine "Webster's Dictionary" whose copyright has expired*; but that no one has a right to deceive the public into purchasing a copy of the obsolete expired book in the belief that it is the later copyrighted edition of the complainant. This is common sense and sound law. Nothing to the contrary is now claimed. But it is a grotesque misapplication of Justice Miller's remarks to cite them in support of what respondent did in this case, viz:—importing a British dictionary, changing its title to Webster, and passing it off as the different, current, established, and copyrighted dictionary of petitioner. No special property in the expired edition, and no trade-mark in the title is needed to support a bill for relief against such a fraud. It is admitted that defendant, and all the world, may make an unrestricted use of the expired 1847 edition, either in whole or in part. All that is insisted upon or claimed in this suit is that no one may sell such literary matter, and *a fortiori* wholly different and variant literary compilations, as and for the petitioner's long established and later copyrighted editions.

Merriam v. Famous Shoe & Clothing Co., 47 Fed. 411, was the second in this series of cases involving complainant's rights in the name Webster. This case also was decided on demurrer to the bill, which was overruled. The decision was rendered in the year 1891. In that case the defendant began to publish *a reprint of the expired 1847 edition*, calling it Webster's Dictionary, and in size, shape and outward appearance resembling the complainant's copyrighted 1864 edition. The defendant described and advertised its books as

"Webster's Dictionary. Famous Reprint Edition. A \$12.00 Book for \$1.45." The bill prayed an injunction restraining the defendants from selling any reprint of the expired 1847 edition under a name and in a dress resembling complainant's 1864 edition and from using dates and devices thereon calculated to pass off defendant's dictionary as and for the dictionary published by complainant. In overruling the demurrer, Judge Thayer said:

"I have no doubt that the defendant is entitled to use the words 'Webster's Dictionary' to describe the work that it is engaged in publishing and selling. *Those words were used to describe Webster's Dictionary of the edition of 1847, and, as the copyright on that edition has expired, it has now become public property. Any one may reprint that edition of the work, and entitle the reprint 'Webster's Dictionary.'* The latter words, which appeared on the title page and on the outer cover of books of the edition of 1847, have become public property, as well as other parts of the work. Defendant's right to call the 'Famous Reprint Edition' 'Webster's Dictionary,' is as clear as the right of complainants to give that title to books of the edition of 1864, which they are now publishing." . . .

"But in some other respects the bill, in my judgment, discloses adequate cause for complaint. In the 'Famous Reprint Edition,' it seems that the defendant has omitted a portion of the preface contained in Webster's Dictionary of the edition of 1847, so that *the reprint fails to disclose on its face that it is in reality a copy of the edition of 1847 and not a copy of the enlarged edition of 1864.* . . . It is unnecessary

at this time to determine what form of relief should be administered, if the allegations of the bill are proven on final hearing. It may be that some change in the form of defendant's circulars and advertisements will be all the relief that the circumstances of the case fairly warrant; or it may be that the proof will *warrant an order that the defendant place a notice in their book that it is a reprint of the edition of 1847 of Webster's Dictionary*, with such additions as they have made to it. This is a matter, however, to be considered, on final hearing, when the exact nature of the injury, and the causes that mislead the public, are ascertained. It is sufficient to say at present that, on the showing made, the complainants are entitled to relief, and the demurrer to the bill is accordingly overruled."

Here again it was held that petitioner was entitled to an injunction against the selling of the expired 1847 edition in a make-up, and in connection with advertisements which tended to deceive the public into buying said 1847 edition of defendant as and for the later copyrighted edition of the complainant. It is also to be noted that *the holding that defendant was entitled to use the name "Webster's Dictionary" was limited to a use upon a copy of the expired 1847 edition*. There is no hint that the defendant would have been entitled to use that name upon a substantially different book. Such use would be a false description.

Merriam v. Texas Siftings Pub. Co., 49 Fed. 944, was the third in this series of cases involving Webster's Dictionary. This case was decided at final hearing upon pleadings and proof in the year 1892. Like the previous cases it involved a

photographic reprint of the expired 1847 edition. The record there was filled with misleading advertisements of the same character as those in the present case. These advertisements were of course enjoined. Judge Shipman said:

"Upon the preceding facts the law has been recently stated with clearness. (*Merriam v. Publishing Co.*, 43 Fed. Rep. 450; *Merriam v. Shoe, etc., Co.*, 47 Fed. Rep. 411; *Black v. Ehrich*, 44 Fed. Rep. 793.) The plaintiffs are not entitled to an exclusive use of the name 'Webster's Dictionary' upon copies of editions the copyrights of which have expired, for the name is not a trade-mark. Mere copies of the edition of 1847 and 1859 can be reproduced by a publisher, over his own name, provided he makes no misrepresentations to induce the public to believe that it is another book, the right to publish which is the exclusive property of the plaintiff. The mere form or size of the volume in which Webster's Dictionary has ordinarily appeared, does not, in the mind of the public, connect the plaintiffs with the manufacturer of the dictionary, and there is no characteristic of a trade-mark in such ordinary form or size. A court of equity would not probably hold that the mere act of the publication of this book, taken by itself, disconnected from any other representations or advertisements, or advertised for what it actually is, would be the subject of an injunction, upon the ground that such act was an unlawful competition in trade. The gist of this case consists of the fact that the defendant, in its attempts to sell the book, made free and ingenious use of misrepresentations, which were intended and calculated to mislead the public into a belief that the book was the one which had long been produced and

sold by the plaintiffs. That such was the natural effect of the defendant's advertisements cannot be doubted. 'Wrongs of this description, whereby, through an artifice of any sort, the goods of one manufacturer become confused in the public mind with the goods of some other manufacturer, may be redressed by a court of equity.' (*Merriam v. Shoe, etc., Co., supra.*) The defendant should be enjoined against the circulation or use of advertisements or circulars which tend to misrepresent the character of the Ogilvie edition of Webster's Dictionary, or lead the public into the belief that it is a reproduction of a modern edition of that work, and especially against the use of the advertisements which are in evidence in this case, or of similar advertisements. If the book had not been advertised in the manner which has been described I should not think it proper to require the defendant to place any notice in the volume itself; but, inasmuch as these advertisements have been extensively circulated, and orders for the book may hereafter be received by the defendant, which will be the fruit of the advertisements, each book delivered by it or its agents should *contain a notice*, by printed slip attached to the title page, *that it is a reprint of the edition of 1847 of Webster's Dictionary*, with a list of the additions that have been made thereto, and which the book contains."

It thus appears that the right of complainant to be protected against a passing off of the 1847 edition as and for the later copyrighted editions of complainant was here again declared and protected. It is also to be noted that the defendant's book was *a photolithographic copy of the genuine 1847 edition* of Webster's Dictionary

and it was, therefore, truthfully entitled "Webster's Dictionary." The Court also called attention to the necessity of defendant's book being "*advertised for what it actually is.*" In accordance with the suggestion of Judge Thayer in the previous case, Judge Shipman required the defendant to place a printed notice in each one of its books stating "that it is a reprint of the edition of 1847 of Webster's Dictionary with a list of the additions that have been made thereto and which the book contains." Of course nothing less should be required in the case at bar.

Singer Mfg. Co. v. June Mfg. Co., 163 U. S. 169, 191, 192, was decided by the Supreme Court in the year 1895. It construed and applied the doctrine of the preceding Webster Dictionary cases, and held that the name of a patented article might be used by any one as the name of that article, after the patent has expired, provided it is used in such a manner as not to mislead the public. After quoting from the foregoing dictionary cases, the Court said:

"Although the right to use the words was thus adjudged, the duty not to deceive by the method of their employment was upheld and enforced. . . . In *Merriam v. Famous Shoe and Clothing Co.*, 47 Fed. 411, a similar ruling to that announced by Mr. Justice Miller was made. But although the right to use the word 'Webster's Dictionary' was sustained, the obligation to so use as not to mislead was again stated, Thayer, J., saying," etc.

The Supreme Court in this case *added one very important qualification to the doctrine announced in the dictionary cases.* The dictionary cases had apparently held that the name might be used,

provided there was no affirmative false or fraudulent representations. In the *Singer* case the Supreme Court held that the use of such a name, *simpliciter*, was deceptive, and hence such names might be used by subsequent traders, only when accompanied by adequate, affirmative, explanatory statements sufficient to unmistakably prevent deception. The holding of the *Singer* case was that the name of a patented article, if accompanied by such explanatory statements, might be used as the name of articles *made in accordance with the expired patent*. It did not hold that the expiration of a patent authorized the name of the patented article to be applied to some other different competing article, any more than the previous dictionary cases had held that the expiration of a copyright authorized the name of the book to be applied to some other different competing book. This point is the crux of the present case, and is further considered hereafter. (See *post*, pp. 39-50).

G. & C. Merriam Co. v. Straus, 136 Fed. 477, decided in 1904, was a bill for an injunction to restrain the use of the name "Webster" in the title of certain small dictionaries. The bill was, in all essential respects, identical with the present bill. The defendant filed a plea setting up expiration of copyright upon the early edition of Webster's Dictionary as a bar to relief. The plea was set down for an argument as to its sufficiency in law, and was overruled. Judge Wallace said:

"The facts set forth in the bill present a case of unfair competition in trade by the defendants, arising from the manner in which they have used the word 'Webster's,' to lead the public to believe that their dictionaries are the dictionaries which are produced and manufactured by the com-

plainants. The plea is a purely negative plea, except that it sets forth facts which show that the word as applied to dictionaries which reproduce the definitions of which Noah Webster was the author was *publici juris*, as a generic descriptive term for such dictionaries, at the time of its alleged wrongful use by them. The plea does not deny explicitly the averments of the bill which assert that the term when used on such dictionaries had acquired a meaning in the trade and with the public as signifying editions which were the product of the complainants, and assert that the defendants have used the word without any qualifying descriptive matter tending to show that their dictionaries are not the product of the complainants. If these averments are true, the word had acquired a *secondary meaning*, and the complainants are entitled to protection against the misleading use of it, notwithstanding the defendants are at liberty to use it in a manner which distinguishes their dictionaries from those of the complainants. Because the denials in the plea do not fully meet the averments in the bill of evidential facts which should be either traversed or admitted, the objections to the plea are well taken.

“ It is proper, however, to say that the bill is in part an attempt to protect the literary property in the dictionaries which became *publici juris* upon the expiration of the copyrights. This attempt must prove futile. But there may be a commercial property in books as well as a literary property, and when a publisher has imparted to his books peculiar characteristics which enable the public to distinguish them from

other books embodying the same literary property, and to recognize them as his particular product, there is no reason why the principles which interdict unfair competition in trade should not afford him protection against the copying of the characteristics by rivals. *So far as the bill proceeds upon this theory it presents a meritorious case.*"

This is a square cut decision that complainant is entitled to an injunction against a misleading manner of using the name "Webster" notwithstanding complainant has not an exclusive right to the word, and notwithstanding every one is at liberty to use it in a manner which distinguishes their dictionaries from those of the complainant. That is the precise doctrine here contended for, and petitioner again disavows any attempt or purpose to protect literary property which has become *publici juris* by the expiration of copyright. Such property may be used, but may not be misrepresented as being the same literary property as that sold by petitioner.

Merriam v. Ogilvie, 149 Fed. 858, 159 Fed. 638, 170 Fed. 167, involved the book variously known as Webster's Universal Dictionary, Webster's Imperial Dictionary, and other similar names. It was originally instituted by Ogilvie to restrain the Merriam Company from issuing circulars claiming *an exclusive right* in the word "Webster" as applied to dictionaries, and threatening Ogilvie's customers with suits for infringement. Petitioner filed a cross-bill to restrain Ogilvie from using the name Webster's Imperial Dictionary and from issuing fraudulent and deceptive advertisements, upon the ground of un-

fair competition. The case was brought to a final hearing upon full proofs.

The Circuit Court (149 Fed. 858) found upon the evidence that the word Webster had acquired a secondary meaning, and indicated to the public dictionaries published by petitioner. Judge Colt said:

"The evidence also shows that the Merriam Company, and its predecessors in title, G. & C. Merriam & Co., and G. & C. Merriam, have been the publishers of Webster's Dictionaries for more than 50 years, having acquired all the rights in Webster's Dictionary from the heirs of Noah Webster previous to 1847, and that since that time they have published numerous editions of this work.

"It further appears from the evidence that from 1847 to 1889 the Merriams were the sole publishers of Webster's Dictionaries and that in 1889 the name 'Webster,' as applied to dictionaries, had acquired a secondary meaning, and indicated to the public the dictionaries published and sold by the Merriam Company. It further appears that, since the expiration of the Merriam copyright in Webster's Unabridged Dictionary in 1889, various editions of Webster's Dictionary have been published and sold by other publisher's; but, notwithstanding this circumstance, *it is shown by a preponderance of evidence that the name 'Webster' still indicates to the public the dictionaries published and sold by the Merriam Company.*

"We have, then, to inquire what are the rights of Ogilvie with respect to the use of the name 'Webster' upon dictionaries after the expiration of the Merriam copyright in

1889; it appears that the name 'Webster' has a two-fold signification, in that it is the generic name of the dictionary, and also indicates to the public the dictionaries published and sold by the Merriam Company."

Judge Colt then held that with the expiration of the copyright "the book and the name by which it is designated are dedicated to the public."

Adding:

"To say that the public have the right to publish the book and not the incidental right to use the name by which it is known, is in effect to destroy the public right and to perpetuate the monopoly. . . . It follows, therefore, as a necessary result that at the expiration of a copyright any person has the right to publish the copyrighted book and to call it by its generic name. . . .

"It follows in the case at bar that Ogilvie, upon the expiration of the Merriam copyright has the right to publish the copyrighted book, or a revised edition thereof, and to call it 'Webster's Dictionary,' or 'Webster's Imperial Dictionary,' provided that he clearly indicates to the public that it is a Webster's Dictionary published by him, and not a Webster's Dictionary published by the Merriam Company."

It is believed that a right to call even a revised edition "Webster's Dictionary" does not follow logically from the right to republish the expired book and call it by its name, Webster's Dictionary, but it is a misnomer to call respondent's book a revised edition because it is a totally different book with a different name and identity of its own.

Judge Colt then held that the mere use of Ogilvie's own name in the publisher's imprint was

sufficient to distinguish his book from that of complainant, and he refused to grant any injunction against the book itself. He held, however, that Ogilvie's advertisements were intentionally fraudulent and deceptive, and that Ogilvie intended to deceive purchasers into buying his dictionary for one of complainant's series of dictionaries. Upon this subject he said:

"With respect to the Ogilvie circulars and advertisements the case is quite different. It is evident that these circulars and advertisements are misleading and deceptive. They convey the impression that the Ogilvie book is a new edition of Webster's Dictionary published by the Merriam Company, and that it is the successor of Webster's International Dictionary; and further Ogilvie has taken portions of the printed matter in the circulars and advertisements of the International Dictionary, and inserted them in his circulars and advertisements. All this goes to show the *intention of Ogilvie to trespass upon the reputation of the Merriam Company, and to deceive purchasers* into purchasing his dictionary for one of the series of Webster's dictionaries published by the Merriam Company. It is clear, therefore, that Ogilvie should be enjoined from sending out these circulars and advertisements in their present form. These circulars and advertisements should be so reformed as not in any manner to convey the impression that Ogilvie is the successor of the Merriam Company, or that his book is a new edition of any of the series of Webster's Dictionaries published by the Merriam Company."

From this decree the Merriam Company took an appeal to the Circuit Court of Appeals for the

First Circuit claiming relief against the book itself. This appeal was decided January 30, 1908, in an opinion written by Judge Aldrich. The Court of Appeals affirmed the holding of the Circuit Court that owing to expiration of copyright, the Merriam Company had no exclusive proprietorship in the name "Webster." It held, however, that the public's right to use the name "Webster" was "subject to a certain and well understood limitation or condition, namely, that the public right to use shall be so exercised as not to deceive members of the public, and lead them into the belief that they are buying the particular or identical thing which was produced under the copyright." The Court said:

"The reasoning of the *Singer* case, which we think applies here, is that the name must be accompanied by such indications as will unmistakably inform the public that the thing is something put out by the particular party who appropriates it and exercises the public right.

"If the title page of the Ogilvie dictionaries had contained, for instance, the words 'Webster's Dictionary, published by George W. Ogilvie,' *with other expressions correctly indicating the identity of the publication*, the Merriam Company would have no just cause for complaint. But such is not this case. . . .

"Where another avails himself of the principle of public dedication, *he must in good faith fully identify his production and clearly disassociate his work* from the work of the one who has given significance to the name, and sufficiently direct the mind of the trading public to the fact that, though the thing is of the same name, it is something

produced and put upon the market by himself.

"Use of a manufacturer's or producer's true name alone would not always suffice as an unmistakable designation and especially where artifice and bad faith are present. . . .

"The designation must be efficient and ample under the particular circumstances of a given situation."

Accordingly the Court of Appeals reversed the holding of the Circuit Court that Ogilvie's book was sufficiently distinguished from complainant's book.

The case was accordingly remanded to the Circuit Court with directions "that the injunction against George W. Ogilvie, his agents, attorneys and servants, be so enlarged as to include the title pages and backs of the dictionaries in the present form or in any form calculated to deceive members of the public into purchasing his dictionary under the belief that it is a Merriam's Webster Dictionary, and for further proceedings" not inconsistent with the opinion. Upon this mandate, Judge Colt in the Circuit Court entered a decree reading as follows:

"3. That a perpetual injunction issue in this suit restraining the complainant, George W. Ogilvie, his agents, attorneys and servants, and all others claiming or holding through or under him, from publishing or issuing the title pages and the backs of the dictionaries in the present form, or in any form calculated to deceive members of the public into purchasing his dictionary under the belief that it is a Merriam Webster's Dictionary."

As this decree plainly did not conform to the mandate and opinion of the Court of Appeals, a

second appeal, upon the same record, was perfected.

This second appeal was determined on March 17, 1909 (170 Fed. 167). Judge Putnam said:

"This is the same case in which an opinion was passed down by us, and judgment entered, on January 30, 1908. 159 Fed. 638. A decree was entered in the Circuit Court pursuant to that judgment, with which the Merriam Company is dissatisfied as not giving it all the relief which the case demands. The objections are two. The first is that the Circuit Court did not insert in the decree what corresponds to what appears in the judgment in *Singer Co. v. June Co.*, 163 U. S. 169, 204; 16 Sup. Ct. 1002; 41 L. Ed. 118, to the effect that the corporation proceeded against was enjoined from using the word 'Singer' without clearly and unmistakably specifying, in connection therewith, that its machines were made by it, and were not the product of the complainant. We may also refer to the more specific corresponding provision in the judgment in *Hall's Safe Co. v. Herring Safe Co.*, 146 Fed. 37, 44; 76 C. C. A. 495; 14 L. R. A. (N. S.), 1182, as modified by the Supreme Court in *Herring-Hall-Marvin Safe Co. v. Hall Safe Co.*, 208 U. S. 554, 560; 28 Sup. Ct. 350; 52 L. D. 616. This precise pointing out was not in terms provided for in the judgment of this court. Therefore, it would not be strange that the Circuit Court omitted it unless its attention was expressly called to it; and the record does not show that this was done. On the case being developed here, we conclude that the decree should be amended by directing that the following words be

inserted by Ogilvie, and those who may succeed him, namely, 'This dictionary is not published by the original publishers of Webster's Dictionary, or by their successors,' and that, of course, these words should clearly and unmistakably appear in the title page of every volume published by the respondent, Ogilvie, or his successors or assigns, of the class to which this litigation relates. *It is not for us to go further than this in directing the precise details which may be necessary to make the decree effective in this particular. It is impossible for the Appellate Court to foresee what changes future emergencies may require; therefore, as usual, whatever may be required further, if anything, for that purpose, must be worked out by the Circuit Court.*"

Thereupon the case was again remanded to the Circuit Court and on April 21, 1909, a decree for an injunction in the following form was entered:

"That a perpetual injunction issue in this suit, restraining the cross-defendant, George W. Ogilvie, his agents, attorneys, servants, employes, and all persons claiming or holding through or under him from using as the name or title of his said dictionaries described in the amended cross-bill herein, to which this litigation relates, the words, 'Webster's Dictionary,' or 'Webster's Imperial Dictionary,' or 'Webster's Universal Dictionary' or any equivalent thereto, upon the title page, or upon the back or cover of said dictionaries, or in any advertisement, circular, notice or announcement referring to said dictionaries, unless accompanied by the following statement plainly printed upon the title page, and in each said advertisement, circular, notice or announcement, namely: 'This

dictionary is not published by the original publishers of Webster's Dictionary or by their successors," and especially from publishing or issuing in their present form, the title pages and the backs of his said dictionaries and the circulars and advertisements in this suit adjudged misleading or deceptive, or any other form of title page, back, circular or advertisements, that is in any way calculated to deceive purchasers into purchasing complainant's dictionary under the belief that it is a Webster's Dictionary, published by the G. & C. Merriam Company."

Merriam v. Saalfeld (C. C. A., 6th Cir.), 190 Fed. 927; 198 Fed. 369, is the latest decision in regard to the name "Webster." It again upheld the complainant's prior and paramount rights and declared Ogilvie's successor guilty of fraud. The case was complicated with the doctrine of *res adjudicata*, and "for conformity's sake" the Court directed an injunction in the same form as was directed in the prior *Ogilvie* case, but it was expressly held that this form of injunction was not necessarily the form to be used for all time even against Ogilvie's successors. A *rehearing* was had in this case, and in an opinion filed July 17, 1912, (198 Fed. 369), complainant's rights were again declared with emphasis. It was found that the term "Webster's Dictionary" indicated to the public that a book so named or marked was the Merriam book, and that this was now in fact the "*primary*" meaning of that term. An injunction and an accounting of defendant's profits were ordered in favor of the Merriams.

Upon this rehearing the Circuit Court of Appeals for the Sixth Circuit reviewed and inter-

preted the decisions in the First Circuit in the *Ogilvie* case, Judge Denison saying:

"In the decisions upon this case in the First Circuit the opinions of the courts only undertook to apply to the facts of the case rules and adjudications that were assumed to be familiar. The interpretative conflicts which have arisen seem to make it *advisable to ascertain, somewhat more completely* than those courts thought their statement necessary, *the principles which underlie those decisions.*"

The nature of the petitioner's rights in the name "Webster" were thus indicated:

"Whether it is the name of a formerly (but no longer) patented article, or is the title of a book with expired copyright, it has become the maker's or the publisher's token, and differs from a technical common law trade-mark mainly, if not wholly, in the fact that the proprietor's right is *not of absolute but of qualified exclusion.*"

Upon the question of expiration of copyright the Court said:

"The situation arising under an expired patent or copyright cannot be differentiated from that arising with reference to any other descriptive word. There can be no trade-mark or similar exclusive right in what has been, during the life of the patent or copyright, the name of the patented article or copyrighted book, not because of any particular rule of trade-mark or patent law, but because the word, during the term of the monopoly, has come to be a word of apt description. It has come to be the name of the thing, and hence any one who later makes the thing may call it by its true name. Neither is there anything peculiar in the application

of the secondary meaning theory to this class of cases. It is to be applied just as with reference to any descriptive word, and if, after the word comes into existence and becomes free to the public as the name of the thing, it is used by one manufacturer so long and so exclusively that it comes to be, to that part of the public, indicative that it is his product, he is entitled to protection for the same reasons, in the same way and to the same extent as held with reference to 'Camel's Hair Belting' (*Rad-daway v. Benham*, App. Cas. 1896, p. 199), 'Glenfield Starch' (*Wotherspoon v. Currie*, L. R. 5 H. L. 508), 'Elgin' or 'Waltham' Watches (*Elgin Co. v. Illinois Co.*, *supra*; *Am. Watch Co. v. U. S. Watch Co.*, 173 Mass. 85, 53 N. E. 141, 43 L. R. A. 826, 73 Am. St. Rep. 263), or 'Hall's safes' (*Herring, etc., Co., v. Hall, etc., Co.*, 208 U. S. 554, 28 Sup. Ct. 350, 52 L. Ed. 616).

"Exactly so, and of necessity, with regard to this copyrighted book."

In other words the right to use the name is limited to one who later makes the thing and calls it by its true name. In the case at bar *defendant does not make the thing, i, e.*, it does not publish the book upon which the copyright has expired, and, hence, *it is not calling its book by its true name*. The true name of defendant's book is the British Empire Dictionary—not Webster's Dictionary.

The decisions below permitting defendant to call its book Webster's Dictionary, without even requiring any explanatory statement, is erroneous and in conflict with every prior Webster Dictionary decision. In the interest of justice and uniformity of decision a writ of *certiorari* should be granted.

IV.

DOCTRINE OF THE SUPREME COURT IN THE
SINGER AND OTHER LIKE CASES.

The doctrine of the *Singer* cases (163 U. S. 169 and 205) was the doctrine applied in the three early *Webster dictionary* cases (43 Fed. 450; 47 Fed. 411; 49 Fed. 944), and it in no way conflicts with the rules which have been stated in respect to the use of generic names which have become trade-names. This doctrine is, in fact, an illustration of the correct application of those rules. During the life of the patent or copyright, the name of the article or book is the generic name of the thing and is not a trade-mark, because it is descriptive of the thing. It may, therefore, be used by any one, even during the life of the patent or the copyright, who deals in that specific thing, because that is making a truthful use of the name. *Johnson v. Seaman* (C. C. A.), 108 Fed. 951; *Vitascope v. U. S. Phonograph Co.*, 83 Fed. 30. But although the name of a copyrighted book or patented article is not a trade-mark, no one may apply that name to a different competing article or book, because this would be a false description tending to pass off such different goods as being the patented article or copyrighted book. *Shook v. Wood*, 10 Phil. (Pa.) 373; *Janney v. Pancoast Ventilator Mfg. Co.*, 128 Fed. 121; *Adam v. Folger*, 120 Fed. 260; *Hoffman v. B. Kuppenheimer*, 183 Fed. 597; *In re Palmer's Trade-Mark*, L. R. 24 Ch. Div. 504. The only effect of the expiration of the copyright or the patent is to enable every one to make the genuine article, and if he does make

such article, he may call it by the generic name which it has always been known by. *Singer Mfg. Co. v. June Mfg. Co.* 163 U. S. 169; *Merriam v. Famous, etc.*, 47 Fed. 411; *Merriam v. Texas Siftings Co.*, 49 Fed. 944; *Merriam v. Holloway*, 43 Fed. 450; *Black v. Ehrich*, 44 Fed. 793. If, however, long use during the statutory monopoly, or afterwards, has given the name a secondary meaning indicating that all goods bearing that name are the product of the original proprietor, the subsequent maker of the goods and user of the name must accompany the name with an explanatory statement adequate unmistakably to distinguish the goods. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co.* (C. C. A.), 166 Fed. 26. Neither a patent nor a copyright confers any exclusive right to any particular name, but only confers the exclusive right to make and sell the article or book to which that name is applied. *Centaur v. Heinsfurter*, 84 Fed. 956, per Mr. Justice Brewer; *Harper v. Ranous*, 67 Fed. 904, per Lacombe, J.; *Corbett v. Purdy*, 80 Fed. 901. There is never any exclusive right or property in such names, and consequently no monopoly in them which may expire, and thus increase the common right. *Black v. Ehrich*, 44 Fed. 793; *Atlas Mfg. Co. v. Street & Smith*, 204 Fed. 403. The name is just as much generically descriptive, and *publici juris*, during the life of the monopoly as afterwards. The only reason why others may not use the name before expiration of the copyright or patent is because they cannot use it truthfully. The only reason why others may use the name after expiration of copyright or patent is because they may

and do use it truthfully. If they do not use it truthfully, they may not use it at all.

Unless the expiration of copyright upon one book justifies appropriation and application of its name to another and different book, respondent cannot justify its use of the name "Webster", for it has applied that name to its old "Crown" or "British Empire Dictionary." No authority can be found in the books which will justify such a practice.

In the *Singer* cases, the defendant claimed to be, and was, selling the distinctive type of sewing machines known as "Singer" originally manufactured under letters patent then expired, but there was no contention, and the court did not even remotely intimate, that the name "Singer" could be used upon a sewing machine of a different type. The contrary was plainly implied, and has been since often decided by other courts.

In *Singer Mfg. Co. v. Hippie*, 109 Fed. 152 (May 1901), Circuit Judge Dallas granted a sweeping injunction because the sewing machine sold by the defendant was not in truth a "Singer". After discussing the decision of the Supreme Court, the learned judge continued as follows (at p. 153):

"If, therefore, the defendant's article were in fact a 'Singer' machine, she would be at liberty to so designate it, provided she also clearly and unmistakably specified that it was not the product of the Singer Company; but the evidence, as I view it, is against her upon the main point, and therefore her manner of marking need not be considered. The machine which she puts upon the market is not a 'Singer'. That word is not, as a name for it, either

necessary or appropriate. Nor can I accede to the contention that her machine is a developed or improved 'Singer'; for the proof is that it is of a distinct type which is and long has been known as the 'Domestic'. Consequently the defendant's employment of the word 'Singer' can have but one result, and that is, not to correctly identify the thing itself, but to mislead the public as to its source of origin; and, this being so, the decision in *Singer Mfg. Co. v. June Mfg. Co.* does not support, but subverts, her present position."

This decision is directly in point. Respondent's dictionary is not a "Webster's Dictionary," in either the historical or current sense of the term. It is neither the obsolete nor the modern Webster's Dictionary as known to the purchasing public. Consequently its use of those words, "*as the name for it*," can have but one result, and that is, not to correctly identify the book itself, and to mislead the public both as to its identity, and the source of its origin. Accordingly, the use of that name, *as a name for the thing* should be enjoined.

In *Jaffe v. Evans*, 70 App. Div. (N. Y.), 190, the Supreme Court of the State of New York held that as the patent upon the article known as "Lanoline" has expired, the defendant was entitled to use that name "*provided its preparation is substantially the same product as plaintiff's*," and the word is accompanied with *indicia* which show clearly that the defendant is the manufacturer." The Court added:

"This necessarily includes the other proposition that the defendant has no right to manufacture something entirely different, and call it 'Lanoline,' nor would it have

the right to use that name in advertisements or labels in such a way as to deceive the public into thinking its product was the one manufactured by the plaintiff."

Respondent is doing, with the sanction of the decision below, precisely what is here said may not be done.

In the "*Castoria*" cases it was held that the expiration of the patent upon the medicine called "*Castoria*" authorized every one to make that medicine and call it by the name of "*Castoria*," but in every instance the right was strictly limited to a use of that name upon a preparation made according to the original expired patented process or formula. *Centaur Co. v. Heinsfurter* (C. C. A.), 84 Fed. 955; *Centaur Co. v. Neathery* (C. C. A.), 91 Fed. 891, 900; *Centaur Co. v. Killenberger*, 87 Fed. 725, 727. A different medicine could not, of course, be called "*Castoria*." The *Beecham* case, 221 U. S., 263, is conclusive upon that point.

In *Jacobs v. Beecham*, 221 U. S. 263, 31 Sup. Ct. Rep. 555 (decided May 15, 1911), the Supreme Court directly held that the generic name of a medicine, made under a secret formula, *although not a trade-mark*, might not be used as a name of a similar medicine not made in accordance with said formula. It also held that in such a case *the burden of proof rests upon the defendant to justify his use of the name by showing affirmatively that his goods are made in accordance with the original formula*, and further, that defendant's use of the name is not saved from being unfair merely because such use is accompanied by the statement that the defendant himself makes the goods, even conceding that he is using the plaintiff's formula.

This is the precise doctrine for which petitioner contends in the case at bar. In accordance with it, the burden is on the respondent to justify its use of the name "Webster's," by showing that its dictionary is a copy of some genuine "Webster's Dictionary." But the contrary appears. Respondent's book is different from all genuine Webster dictionaries, either ancient or modern. The decision below is in irreconcilable conflict with this controlling decision.

In *Baglin v. Cusenier Co.*, 221 U. S. 580, 31 Sup. Ct. Rep. 669 (decided May 29, 1911), the name of the liqueur "*chartreuse*" was protected at the suit of the monks, who manufactured it under a secret formula, against the official liquidator of the French Government, which had seized the monks' property upon their expulsion from France. The liquidator had, by experiment, produced *a similar liqueur, but he did not know the original and true formula.* In the court below an injunction was entered in the following form restraining the use of

"the trade-mark, '*chartreuse*' or of any colorable imitation thereof, unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants."

The Supreme Court, on appeal held this form of injunction erroneous for the following reason:

"It amounted, by reason of the juxtaposition with what preceded, to a permission to the defendant to use the trade-mark '*chartreuse*,' or that word, AS THE NAME OR DESCRIPTION OF ITS LIQUEUR, provided it were distinguished from the liqueur of the monks. This was inconsistent with the decree as to the ownership of the trade-mark."

The Supreme Court thereupon directed an injunction in the following form:

"And from using the word 'chartreuse' . . . as the name of, or as descriptive of, such liqueur or cordial, or without clearly distinguishing such liqueur or cordial from the liqueur or cordial manufactured by the complainants."

The Supreme Court thus distinctly recognized the rule that *the generic name of an article may not be falsely used as the generic name of a different article, even if such false use is accompanied by explanatory statements.* This was not limited to names that are trade-marks. Upon the same principle, the respondent here should not be permitted to falsely say that its books are "Webster's Dictionary." *An injunction in this case should be directed in the form above directed by the Supreme Court.* That form is precisely appropriate to the facts of this case.

In *Liebig's Extract of Meat Co. v. Liebig Extract Co.* 180 Fed. 688, 690, the Circuit Court of Appeals said:

"If the complainant is manufacturing under a secret process invented by Baron Liebig, any other person using his name in connection with extract of meat *should be enjoined unless he proves that he is using a process open to the public and known as 'Liebig's Process,'* . . . the defendant should be enjoined, because it has refused to state how it manufactures its extract of meat." *Per Ward, J.*

In the *Ogilvie* case, 149 Fed. 858, (C. C. A.) 159 Fed. 638, it was held that the expiration of copyright upon the 1847 edition of Webster's Dictionary authorized any one to publish a revised edition of that book under the name of Webster's

Dictionary, provided an explanatory statement accompanied such use of the name. This was placed upon the assumed doctrine of the *Singer* case which was deemed controlling. It is submitted that this is a misapplication of the *Singer* case, and is inconsistent with all the later cases above cited, because Ogilvie's dictionary, while actually based upon and revised from the expired Webster Dictionary was in fact a different book and not truthfully described by the name Webster's. But in any event, this decision does not aid respondent here for its book is not a revision of Webster's Dictionary, and it has used the name without any explanatory notice.

The decision below is inconsistent with both the *Ogilvie* and *Saalfeld* decisions, in that it requires no warning notice to be used, and it is inconsistent with the decisions of the Supreme Court both in that respect, and because it allows the name "Webster's" to be falsely used *as the title* of the "British Empire Dictionary."

There are numerous cases wherein the title of a book, periodical, or other literary production, has been protected by injunction against use or imitation in connection with some *different publication* which the defendant was lawfully entitled to publish and sell in competition with complainant's work and in which no question of infringement of copyright or protection of literary property was involved. *University of Oxford v. Wilmore-Andrews Pub. Co.*, 101 Fed. 443; *Social Register Assn. v. Howard*, 60 Fed. 270; *Harper v. Holman*, 84 Fed. 224; *The "Iolanthe" case*, 15 Fed. 439; *Thomas v. Lennon*, 14 Fed. 849; *Aronson v. Fleckenstein*, 28 Fed. 75, 51 L. R. A. 378; *Gannert v. Ruppert*, 119 Fed. 221; *Hogg v. Kirby*, 8

Ves. 215; *Dicks v. Yates*, 18 Ch. Div. 90; *Weldon v. Dicks*, 10 Ch. Div. 247; *Bell v. Locke*, 8 Paige Ch. (N. Y.) 75; *Matsell v. Flanagan*, 2 Abb. Pr. (N. S.), N. Y., 459; *Shook v. Wood*, 10 Phila. (Pa.) 373; *Harper v. Lare*, 103 Fed. 203 (C. C. A.); *Lare v. Harper*, 86 Fed. 481; *Borthwick v. Evening Post*, L. R. 37 Ch. Div. 449. Why should the famous Webster's Dictionary alone be denied protection?

In *Estes v. Williams*, 21 Fed. 189, the complainant's book was entitled "Chatter-box." It was published *without being copyrighted*, and therefore became *publici juris* to the same extent that every book does upon the expiration of its copyright. The defendant published a book of *different literary contents* just as respondent does in the case at bar, and entitled it "Chatter-box." His use of that title was enjoined upon the ground of unfair competition. The point here under consideration was thus disposed of by Judge Wheeler:

"Johnston had the exclusive right to put his own work, as his own, upon the markets of the world. No one else had the right to represent that other work was his—*not the right to prevent the copying of his*, and putting the work upon the markets, *but the right to be free from untrue representations that this other work was his* when put upon the markets. This gives him nothing but the fair enjoyment of the just reputation of his own work, which fully belongs to him. It deprives others of nothing that belongs to them."

This decision was followed in the later "Chatter-box" cases, decided by Judges Wheeler, Wallace and Shipman. *Estes v. Leslie*, 27 Fed. 22; *Estes v. Worthington*, 22 Fed. 822; 30 Fed. 465; 31

Fed. 154; *Estes v. Belford Clark Co.*, 30 Off. Gaz., 99.

In *Merriam v. Saalfield*, opinion on rehearing, 198 Fed. 369, it was held that the only reason why the name of a copyrighted book may be used by any one after expiration of the copyright was

"not because of any particular rule of trademark or patent law, but because the word, during the term of the monopoly, has come to be a word of apt description,—it has come to be the name of the thing, and, hence, any one who later makes the thing, may call it by its true name."

This rule would have led to an injunction against any use of Webster in the title of Saalfield's books, instead of merely requiring a warning notice to be used, but for the fact that the Court was concluded by the doctrine of *res adjudicata*, because Saalfield stood in Ogilvie's shoes, and right or wrong, the decision in the First Circuit furnished the rule for Saalfield in the Sixth Circuit. Leave has since been granted to file a bill of review upon the ground that some of Saalfield's books are mere reprints of the English "Chamber's 20th Century Dictionary," and hence not entitled to be called Webster's, even when accompanied by a warning notice. This bill of review is now pending, and presents the same questions here involved.

In *Metzler v. Wood*, 8 Ch. Div. 606 (also reported in 47 L. J. Ch. 625; 33 L. T. N. S. 541; 26 W. R. 577), plaintiff's book was not copyrighted, and hence entirely *publici juris*. The author's name appeared in the title. *Defendant employed the same author to prepare and edit a different work upon the same subject*, and placed the name of such editor prominently in the title. The name

of plaintiff's book was "Hemy's Royal Modern Tutor for the Pianoforte," the name of defendant's book was "Hemy's New and Revised Edition of Jousse's Royal Standard Pianoforte Tutor." The use of the name "Hemy's" *in the title* of defendant's book was enjoined, upon the ground that it was deceptive, though, of course, he had a right to use it in a properly descriptive manner, and in a way which would not deceive.

In *Dicks v. Yates*, 50 L. J. Ch. N. S. 809, Lord Justice James distinguishing unfair competition in books from infringement of copyright, said:

"There is another mode which, to my mind is wholly irrespective of, and anterior to, any copyright legislation, and that is where a man is selling a work under the name or title of another man or another man's work. There is not invasion of copyright. *It is a common law fraud.* It is to be redressed, and is capable of being redressed, by ordinary common law remedies, wholly irrespective of any of the conditions or restrictions imposed by the Copyright Acts. Suppose a man were to publish a book of cookery, calling it as 'Soyer's Cookery Book,' *which it is not*; or an arithmetic, as 'Colenso's Arithmetic,' which it is not; or 'Hemy's Pianoforte Tutor' (as in the case of *Metzler v. Wood*, before the Court of Appeal), which it is not;—that is a common law fraud."

The doctrine of unfair competition would have no application to the book trade if the expiration, of the copyright upon a book authorized the use of its title upon every and any other book to which rival publishers might see fit to apply it. Such a rule, if established, would be destructive of the name, reputation and identity of Webster's Dictionary. Soon no one would care to use that

name because of the varient and mongrel productions to which it would be applied, and of which respondent's book in this case is an instance. Petitioner's good-will, built up by vast expenditures, and over sixty years of honorable dealing, will be totally destroyed.

So long as defendant is permitted to falsely describe its book, and say that it *is* "Webster's" dictionary, it deceives the public, to petitioner's injury *as to the identity of its book*. This deception is not prevented in any degree by merely adding a statement to the effect that the book is published by defendant, and that it is not the original publisher of Webster's Dictionary, or a successor. Such a statement does not save the fraud as the Supreme Court pointed out in *Jacobs v. Beecham, supra*.

It is respectfully submitted that an injunction should have been directed restraining respondent's use of the term "Webster's Dictionary," as the title of its different book, in substantially the form adopted by the Supreme Court in the "*Chartreuse*" case (*supra*), viz.: that defendant be enjoined from

using the word 'Webster's,' either alone or in association with any other word, in connection with the publication and sale of its said dictionaries, *as the name of*, or as descriptive of, such dictionaries, or in any other manner without clearly distinguishing such dictionaries from the dictionaries of complainant.

Such a decree was affirmed in *Jacobs v. Beecham, supra*.

V.

CONCLUSION.

It is respectfully submitted that the petition should be granted, and a writ of *certiorari* issued, to review the decision below upon the ground that it is erroneous and inconsistent with controlling decisions of the Supreme Court, and with the decisions of other Circuit Courts of Appeal in like cases involving the name Webster's Dictionary, and contrary to established rules of law in cases of unfair competition.

Dated, September 10th, 1913.

WILLIAM B. HALE,
Counsel for Petitioner.



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Office Supreme Court
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JAMES H. McKE

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1913.

G. & C. MERRIAM COMPANY,
Petitioner,

vs.

THE SYNDICATE PUBLISHING COMPANY,
Respondent.

RESPONDENT'S MEMORANDUM IN OPPOSITION TO
THE PETITION FOR WRIT OF CERTIORARI.

HUGH A. BAYNE,
Counsel for Respondent.

C. G. BURGOYNE, 72 to 78 Spring Street, New York.

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1913.

G. & C. MERRIAM COMPANY,
Petitioner,

AGAINST

THE SYNDICATE PUBLISHING
COMPANY,
Respondent.

**RESPONDENT'S MEMORANDUM IN OPPO-
SITION TO THE PETITION FOR WRIT
OF CERTIORARI.**

I.

This Court has once before denied this Petitioner's petition for a writ of *certiorari* to review the same questions which it again urges, in its petition in this case, are of such importance that this Court ought to review them by writ of *certiorari*.

See the petition for writ of *certiorari* in *G. & C. Merriam Company, Petitioner, versus George W. Ogil-*

vie, Respondent, in the Supreme Court of the United States, October Term, 1907.

The reasons now urged for granting the writ were then urged and rejected. Compare the Petitioner's statement of the questions which it now asks this Court to review, as set forth in its present petition, at pages 11 and 12, paragraphs 1, 2 and 3, thereof, with the corresponding statement of the questions which it then asked this Court to review in the *Ogilvie* case (*supra*) as set forth in its brief filed in support of its petition, in that case, at pages 8 and 9, paragraphs 1 and 2 thereof.

The reasons which moved the Court in 1907 to refuse to review those questions by writ of *certiorari* should be equally good to-day.

II.

If the foregoing consideration should not be conclusive against the petition, we believe that a reading of the opinion delivered by the United States District Court and followed by the United States Circuit Court of Appeals, in the present case, will satisfy the Court that no peculiar questions are presented by the judgment sought to be reviewed, but that elementary equitable principles, only, are involved.

For the convenience of the Court we have reprinted Judge HAND'S opinion at pages 3 to 13 of this memorandum, and the opinion of the Circuit Court of Appeals at page 14 hereof.

Judge Hand's Opinion.

" HAND, D. J. : The complainant has never succeeded in getting from any court a decree which would forbid the publication of a " genuine " Webster dictionary in the form in which the defendants were selling theirs at the time these suits were started. The defendants had not only conformed in every way to the terms of the decree in the case of Merriam v. Ogilvie, as it was finally entered, but they had advised the complainant of their submission to the law as there laid down and of their purpose in future to adhere to it.

The complainant brings this suit upon the theory that the book published (for the two books are nearly identical in content), is in fact not based upon Webster's dictionary at all, that it has no right to be called Webster's Dictionary in any sense, and that it is a fraud to call it such. Indeed, they do not concede that any one has any right but themselves to use the word " Webster's " upon a dictionary, unless it be one of the original dictionaries published by Webster himself, and even in that case they insist that it must be distinguished by the statement that it is one of the original Webster's dictionaries, a fact which would probably destroy any possibility of its sale anyway. Their pretension extends even to the point of forbidding the sale of any dictionary honestly compiled upon Webster's original sources, since they assert that the name " Webster," when applied to any such compilation or abridgment, necessarily implies their own responsible supervision and authorship. I have not, however, the least doubt at

the outset in overruling so extreme an assertion as this. It is quite clear that any honest compilation or abridgment at the present time of Webster's work is entitled to describe itself as such, and that the most which the complainant's supposed right could in any case do, would be adequately to indicate that a work so described was not a compilation or abridgement by the original publishers of Webster's Dictionary or their successors. Indeed, it is a preposterous assertion to say that the name "Webster's" as at present used by the complainants themselves does not indicate to the public mind that their work has some connection with Webster's original work other than that they choose to publish it, or that it need not be the result of a legitimate literary descent from his original. In other words, even though the word indicates *prima facie* that the book is the complainant's compilation, it also still indicates that it is a compilation with Webster as its original source, and it is in this sense that Judge COXE spoke when he said that the word had two meanings, a proprietary and a descriptive. Nor is there any inconsistency in such a dual meaning; the word may mean "Merriam's compilation from Webster," quite as well as "Merriam's Compilation." If it does, it must as well answer to one part of its definition as to another, in short, it must be a compilation from Webster, or it is a fraud. I pay not the least attention to those witnesses who say that it means only "Merriam's Compilation." If the name "Webster" has this descriptive significance, it is quite clear that it will also honestly describe any actual compilation

from any one of Webster's dictionaries, provided that some suffix be added to distinguish the compilation from Merriam's. The word need not by any means be confined to the original work of Webster himself. Indeed, the only authority which has ever independently given the complainant any trade rights in the name "Webster," itself refused absolutely to forbid the defendant from using the name upon what was in every sense a compilation. In *Merriam v. Ogilvie*, 149 Fed. R., 860, Judge COLT says that Ogilvie's work was an enlarged and revised edition of the Webster of 1847. Now the edition of 1847 was not by any means a Simon-pure Webster, for its title page asserts that, although it contained the whole vocabulary of the first edition in two volumes, the entire corrections and improvements of the second edition (both by Noah Webster), it had been revised and enlarged by Chauncey A. Goodrich. Just what the abridgement from two volumes to one involved and just what was the revision and enlargement of Goodrich which accompanied the abridgement added does not appear, but it does appear that the work which the Circuit Court of Appeals of the First Circuit permitted to bear the name "Webster" had passed through two revisions of one sort or another, and this is enough to dispose of the assertion that the only work which may be called "Webster" is some book just as it left the hands of Noah Webster.

The first question, therefore, which arises, is whether the dictionary in question was based upon Webster's original work in such sense that it is entitled to be known by that name. In the

solution of this question I am not disposed to enter into any nice considerations of a literary character, such, for example, as Professor Peck suggests, as to what creates a Webster's dictionary, for it is quite clear that whatever scholars may think, the public generally—and it is the public with whom we are now concerned—mean something else by the words in question. What is it that they do mean, either by a Webster's Dictionary or a dictionary based upon Webster's? It seems to me that they mean the way the book has been made up more than its present contents, its history rather than its present identity with its source. The word at least denotes what I should call literary descent from Webster's original books; that is, that each book in the series of which this is the last, was made up by its author with its predecessor before him, only changing the spelling, definition, vocabulary and the rest as his opinions, and learning, indicated to him that changes were required to adapt the book to the present; and that this succession goes back without break to some work by Webster himself. Nor is it indeed possible for the complainants to take any other position than this without putting themselves in the position of foisting upon the public a spurious work. Their own last edition, that of 1909, is a book of almost totally different literary contents from any book with which Noah Webster had anything to do. They have the alternative of accepting the definition of "Webster" as indicating this kind of descent, or of maintaining that "Webster" means any work of theirs, and has no descriptive significance whatever. Other-

wise they are within the rule in the California Fig Syrup Case. Of course, a "Webster" dictionary must own Webster as its father originally; and in the case at bar, although the heredity of the original complainants' 1909 Webster is all that gives it its character as a Webster, yet it still has that character, remote now as the content may be. The complainant is in no position to deny a purely descriptive use of the word to any other dictionary which is as legitimate as its own. The constant iteration that all such are "bogus" or not "genuine" is merely a childish extravagance.

Now, does the defendants' book answer this description as well as the complainant's? The complainant has established beyond any question, in my judgment, that the immediate basis of the Crown Dictionary was the British Empire Dictionary, which has been put in evidence in this case, and which was edited by the Rev. E. D. Price, F. G. S. The proof of this consists in the identity of the literary matter between the two, which is so great as to be substantially identical. The parties in taking testimony have proceeded upon the assumption that the kinship between dictionaries may be ascertained by examining the verbal identities in the contents. Thus, at what must have been an appalling labor, they have each prepared tables showing the identity of subject matter between the defendants' book and others. It so happens under the complainant's table, that of all those examined the closest in content to the British Empire Dictionary is Ogilvie's Imperial Dictionary of 1883. The similarity of contents extends to 70% of literal identity; that is to say

70% of the contents of the British Empire Dictionary appears verbatim in the Imperial. The identity in the case of the Concise Oxford is only 28% and of what I am tempted to call the non-Websterian group, ranges from there to about 40%. Considering the difference in time of their appearance this identity with the Imperial is adequate *prima facie* proof that the former is the literary descendant of the other, and in the absence of contradiction justifies me in so assuming, when compared with the extremely low percentages of the other more or less contemporaneous works. Certainly one who advertises that work as a Webster which has scarcely any of Webster's matter within its covers cannot afford to be too meticulous. It also so happens that the first edition of the Imperial Dictionary published in 1850 is in evidence written by the well known lexicographer John Ogilvie. The title page of this work says that it is "On The Basis Of Webster's English Dictionary", while the preface, dated December, 1849, more fully states the sources. Thus, on page iii of this preface appears the following: "In adopting Webster's dictionary as the basis of the Imperial Dictionary the great object of the editor in preparing the latter has been to correct what was wrong and to supply what was wanting in Webster in order to adapt the new work to the present state of literature, science and art. Accordingly, every page of Webster has been subjected to careful examination, numerous alterations and emendations have been made, a vast number of articles have been re-written, very many of Webster's explanations of important terms have been enlarged and many new and correct definitions of others given; new

senses have been added to old words where they were found wanting, and a multitude of new words and terms have been introduced, especially in the scientific and technological departments, so that to Webster's addition of twelve thousand to Todd's Johnson, a further addition has been made of at least fifteen thousand words and terms."

Now that is exactly what I think the public means by a "Webster" brought up to the time of its publication, and it is in exactly this sense, and only in this sense, that the complainant has any right to continue to call its present dictionaries "Webster's", whether or not it indicates the complainant's own compilations when not accompanied by any suffix. Certainly Ogilvie could have called the Imperial Dictionary either "Ogilvie's Webster" or the "Imperial Webster" or any other kind of "Webster" that he wished. The successive editions certainly were Webster dictionaries and so were any smaller works, derived from those editions, whether abridgments, condensations, or the like. Nor does it seem to me to matter that the intermediate sources did not go by the name Webster. Here, for example, is a work which comes down by precisely the same kind of line of descent from Webster that the complainant's present abridgments come, each individual in the line being formed from its predecessors by some accretion, some elimination, some amendment, till one reaches the work of Webster himself. When the public uses "Webster" does it understand that all the intermediate steps shall have been so named? I hardly think so. Rather, it seems to me, it is the fact of its unbroken descent that the word implies. Rolfe, a con-

cededly fair witness, was asked his opinion upon this question, and, while I should not feel in the least bound by it, I should be very glad to give it weight, if I could understand what he meant by his answers. He says it would justify the use of the title "Webster's dictionary" if the book were taken from Ogilvie; that is if Ogilvie could be called an English Webster, but that though justifiable it was not a natural thing to do and that he personally, from a literary point of view, should not use it. So far as this means anything, it is that in the witness's opinion the name could honestly be used. Therefore, I believe that the defendants have shown that their dictionary is really a Webster entitled to be so called quite as much as the Ogilvie dictionary in the suit of *Merriam v. Ogilvie*."

(Then follows a long discussion, regarding the competency of certain evidence, which I omit because it does not bear in any way on the questions raised by the Petition for a writ of *certiorari*.)

"Therefore the defendants had the qualified right to call their books "Webster's," provided they properly distinguished so as to cut out the secondary meaning, and the only question which can remain is whether the statement upon the title page of the books is sufficient notice, since the books are properly marked upon the back. The form of the notice is that set forth in the final decree of the Circuit Court for the District of Massachusetts as contained in 190 Fed. R. at page 931. The only criticism which I can make upon the printing at the top of the page is that it is

in rather small type. Had the attitude of the complainant been different when the defendants approached it with a view of adapting their make-up to the terms of the Massachusetts decree, I might now be willing to take up the question whether that notice ought not to be more conspicuous upon the page, but I am not disposed to indulge this complainant in such a way in the case at bar. When the defendants each approached its officers in a *bona fide* effort to accommodate themselves to the utmost rights which the complainant had up to that time enjoyed, they were met with a demand for absolute discontinuance of the name; they are met with it here. This was illegal and had been so adjudged against this complainant in the very decree which is the basis of any supposed right they may have in the name, "Webster". They certainly by such a claim absolved the defendants from any nice adaptation of their typography to the terms of that decree, and I shall not inquire whether it gives the fullest protection to which the complainant is entitled.

I have decided this case upon the assumption that the word, "Webster", had acquired a secondary meaning indicating at once the derivation of the work and its responsible compiler. That assumption I make in deference to the decision in the First Circuit, though it is in no sense authoritatively binding upon me. There are several reasons why, if it were necessary, I should not hesitate to re-examine that question of fact. In particular the defendant in that case did not contest the question, at least, after the first decision, as his briefs show, nor did he con-

test it in the case in the Sixth Circuit. Moreover, the record must have been quite different in that case for Judge COLT to say that no one but the complainant published any Webster dictionaries between 1847 and 1889, a fact abundantly disproved in the case at bar. I need not here decide the question of secondary meaning, and I accept, since it has not been necessary to question it, the result of the decision in the First Circuit, which is the first success the complainant has ever had in its long and persistent efforts to establish a monopoly over the word "Webster." Nevertheless, this case can never be truthfully cited as in the slightest degree contributing to the establishment of that result, or indicating that I assent in any way to the claim of secondary meaning. That question I leave exactly as I find it, without deciding that the meaning exists, that it does not exist, that it has been proved, or that it has not been proved.

I have looked over all the advertisements of the Syndicate Publishing Company, which make a very shoddy kind of appeal, but after the date when the defendants attempted to come to terms with the complainant they appear usually to bear the addition which the complainant procured as the measure of its relief in the Ogilvie case. As to those which do not and which for the most part are in the form of news articles, I find no evidence to contradict the *bona fides* of the defendant's efforts to conform the advertisement with the decree and I am not disposed to charge them with such as continued to appear. The prominence and form of the suffix must be held satisfactory in view of the complainant's attitude towards the defendant when approached

and its illegal claim of a monopoly in the name. If the defendant was content to yield to the terms of the Ogilvie decree, it might upon the complainant's demand have been subject to some modification of its advertisements as of its title-page. That right justified no such proceeding as this, designed to do just what the complainant was forbidden to do in the First Circuit.

As to the Cupples & Leon Company¹, I am in more doubt. The testimony of Leon is of very unsatisfactory character and his claims to a dictionary upon which the defendant had done any substantial work are not justified. The advertisements are not warranted by the facts, for it is in no sense the modern book it professes to be. I do not believe that the defendant knew or in the least cared what was its contents, if it would sell as an up-to-date book. However, that gives no rights to the complainant, so long as its own limited use of the name is not infringed. None of the advertisements attempt to pass off the books as complainant's, and it cannot object that the public is buying as a modern Webster substantially the old Crown Dictionary. The law may some day protect one man who sells a sound quality of goods so described against another who sells an unsound quality, dishonestly described, but it has not done so yet. Now we trust to the public to find out that they have been hoodwinked and to distinguish. Moreover, it does not certainly appear that the defendant is responsible for its customers' advertisements.

Both bills will be dismissed with costs."

¹ The Cupples & Leon Company was defendant in another suit brought by the Petitioner, which was argued and submitted with the suit against this Respondent.

Opinion of the Circuit Court of Appeals.

" Per curiam :

" Taken as a whole, we fully approve Judge HAND'S opinion and upon it affirm the decree appealed from. In so doing, however, we must not be regarded as assenting to the proposition that the name 'Webster's Dictionary' has a technical or secondary meaning as indicating a publication of the complainant. And, on the other hand, we must not be considered as indicating an opinion that cases cannot be presented showing unfair competition in the sale of books or as passing upon the relief which may be granted in cases of fraud.

" The decree of the District Court is affirmed with costs."

The foregoing opinions, in discussing Respondent's right to use the name " Webster's," as part of the title of its dictionary, go no further than to point out that, as Respondent's dictionary traces its literary descent back to Noah Webster's own work, and as the Petitioner's dictionary has no other relation to Noah Webster's own work than literary descent, the Petitioner could not claim that the Respondent's use of that title was less truthful than the Petitioner's use thereof. This Court should be informed, however, that Respondent's use of that title is truthful in every sense, while, in so far as that title represents to the public that the book contains a substantial proportion of Noah Webster's definitions, the Petitioner's use thereof is wholly untruthful. Respondent's book contains an essential proportion of

Webster's definitions¹, while the Petitioner's latest book, as Petitioner's own witness admitted and as Judge HAND found, "is of almost totally different literary contents from any book with which Noah Webster had anything to do" (See Judge HAND's opinion at page 6 hereof, the eighth to fifth lines from the bottom of the page).

Therefore this case presents for consideration the simple equitable principle that a trader who himself deceives the public by false labelling will not be heard by a Court of Equity.

Worden vs. California Fig Syrup Co., 187
U. S., 516.

III.

If the petition be not rejected on the grounds heretofore urged, it must be denied, we submit, for the reason that there is now pending, in this very Court, an appeal by this Petitioner from the very judgment which it asks this Court to review by writ of *certiorari*.

Respectfully submitted,

HUGH A. BAYNE,
Counsel for Respondent.

¹ Petitioner's own witness, Mawson, who compared respondent's book with Webster's dictionary of 1847, testified that he found 45 per cent. of the book "by actual" count "absolutely identical" "with Webster's Dictionary of 1847." He based his testimony on a count of about 30 pages. Defendant's witness, Prof. Peck, compared about 200 pages and found 55 per cent. of identity. Both found that 18.5 per cent. of the contents of the book consisted of new words not defined by Webster. This left only 26.5 per cent. to 36.5 per cent. of its definitions different from Webster's, these differences being due to revisions of scientific and similar terms, which Webster defined inaccurately or awkwardly.



Office Supreme Court, U. S.

MAR 19 1915

JAMES D. MAHER

CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

G. & C. MERRIAM COMPANY, *Complainant-Appellant,*

vs.

SYNDICATE PUBLISHING COMPANY, *Defendant-Appellee.*

No. 217.

BRIEF IN SUPPORT OF CERTAIN CONTENTIONS OF APPELLEE.

WADE H. ELLIS,
Counsel for Appellee.

R. GOLDEN DONALDSON,
HUGH A. BAYNE,
CHALLEN B. ELLIS,
Of Counsel.

INDEX.

I.

	Page
In the absence of extraneous fraud the use of Webster's name as part of the title of a revision, abridgement or amplification of his work, accompanied by the name of the publisher printed in the customary manner, does not constitute unfair competition in the business of publishing dictionaries	1

II.

The "Secondary Meaning" Theory	26
--------------------------------------	----

TABLE OF CASES.

Ambrose vs. Stuart, 209 U. S., 665.....	32
Black vs. Ehrich, 44 Fed., 793.....	28
Brill vs. Singer Mfg. Co., 41 Ohio St., 127.....	14
Cheavin vs. Walker, L. R. 5 Ch. Div., 850.....	17
Elgin National Watch Co. vs. Illinois Watch Case Co., 179 U. S., 365	21
Fairbanks vs. Jacobus, 14 Blatchf., 337	13
Gally vs. Colt's Patent Fire-Arms Mfg. Co., 30 Fed., 118..	15
Herring-Hall-Marvin Safe Co. vs. Hall's Safe Co., 208 U. S., 554	22
Holzapfel's Composition Co. vs. Rahtjen's American Composition Co., 183 U. S., 1.....	20
Linoleum Mfg. Co. vs. Nairn, L. R. 7 Ch. Div., 834.....	18
Merriam vs. Famous Shoe & C. Co., 47 Fed., 411.....	16
Merriam vs. Holloway Publishing Co., 43 Fed., 450.....	15
Merriam vs. Syndicate Publishing Co., 207 Fed., 515.....	32
Singer Mfg. Co. vs. June Mfg. Co., 163 U. S., 169.....	9
Singer Mfg. Co. vs. Larsen, 8 Biss., 151.....	14
Singer Mfg. Co. vs. Riley, 11 Fed., 706.....	14
Singer Mfg. Co. vs. Stanage, 6 Fed., 279.....	14, 23
Waterman Co. vs. Modern Pen Co., U. S. Supreme Court Advance Opinions, Jan. 1, 1915, p. 91.....	22
Wheeler & Wilson Mfg. Co. vs. Shakespear, 39 L. J. Ch., 36	17



IN THE
Supreme Court of the United States

OCTOBER TERM, 1914.

G. & C. MERRIAM COMPANY, *Complainant-Appellant*,
vs.

SYNDICATE PUBLISHING COMPANY, *Defendant-Appellee*.

No. 217.

SUPPLEMENTAL BRIEF.

I.

In the absence of extraneous fraud the use of Webster's name as part of the title of a revision, abridgment or amplification of his work, accompanied by the name of the publisher printed in the customary manner, does not constitute unfair competition in the business of publishing dictionaries.

The purpose of this suit is to secure for the appellant a practical advantage over all its numerous competitors in the sale of Webster's dictionaries, so as to establish a virtual monopoly of that business. This

is to be accomplished either (1) by preventing all competitors from using the word "Webster's" in the title of revisions, abridgments or amplifications of "Webster's" dictionaries which they publish and in which they use Webster's work, just as appellant does, or (2) by requiring that all such competitors using the word "Webster's" in the title shall, in addition to stating the name of the publisher at the appropriate place, add thereto a warning, the effect of which is to suggest to the public that the Webster Dictionaries issued by the appellant are the *only* ones which are really genuine and authentic.

The copyrights on the lexicographical works of Noah Webster have long since expired. At the expiration of the copyright any one had the privilege of publishing the work of Noah Webster either with or without additions and improvements, and as the dedication of the work to the public carried with it the dedication of the name by which Webster's work was known ("Webster's") any one had the right to designate the matter which he appropriated and used by the name which described it, and to do this in usual and customary ways, that is, by using it as part of the title of his book. There are and have been numerous publishers of Webster's dictionaries. The appellant desires an unrestricted use of the contents and title of the expired copyright work, while imposing upon all others a restricted use. It claims the right to use freely the name "Webster" in the titles of its dictionaries, while it seeks authority to force its competitors to some qualified use of that

title. To accomplish the purpose appellant has in view the character of this qualified use must be such as to leave in the mind of the public the impression that the dictionaries of the appellant are the "only real Webster Dictionaries." That is to be brought about either by forbidding competitors to use the word "Webster's" at all in the title (although they may use Webster's work and so state) or by requiring them, if they use "Webster's" in the title, to accompany such use with a conspicuous caution to the public which will, in effect, suggest, on the one hand, that the books offered are imitations and fraudulent, while, on the other hand, there is a book published by some one else which is the authentic and genuine Webster, and which the purchaser may secure if he so desires; thus at once condemning their own product and extolling the product of their competitor, the Merriam Co.

At page 7 of brief of counsel for appellant it is said that the appellant was entitled, in the court below, to a decree enjoining the defendant from using the name "Webster" as part of the title of its book, or requiring the defendant to use *an adequate distinguishing statement* in connection with any use of the word "Webster" in order to prevent deception.

At page 162 of the brief, counsel for appellant sets out the form of decree desired. According to this proposed decree the appellee is to be enjoined from using the name "Webster" in the title of its dictionaries, or, if the name is so used, then from using it unless accompanied by a cautionary phrase plainly

printed and prominently displayed upon the title page and outside cover, and in all advertisements or circulars in which the name "Webster's" appears. In other words, such decree would require that, though appellant is free to state what his dictionary *is* and not caution the public as to what it *is not*, each of his competitors shall be compelled to warn the public what his dictionary *is not*, this warning to relate in some way to its authenticity or reliability.

Of course appellant is not concerned with the exact language of this warning and various forms have been proposed by appellant in other cases. The material thing is that it should suggest in some way that the book offered does not really and truly contain Webster's authentic work like some other book which is available, that is, the Merriam book, and such warning is demanded *notwithstanding* that each publisher plainly states upon his title page his full and correct name as publisher, and such name is in every case *clearly* distinguishable from the "G. & C. Merriam Co."

At pages 13 to 64 of the brief, appellant argues at length this claim to thus restrict its competitors in the use of the name "Webster's."

The purport of this argument is as follows: The word "Webster's" when used in the titles of dictionaries has lost its significance as the name of the world-famous author and lexicographer—and has come to mean solely the dictionaries compiled and published by the G. & C. Merriam Company of Springfield, Mass. Therefore, when

any one uses the title "Webster's" either alone or in combination with any other descriptive word, it is just as though such person placed in the title all that appellant claims is indicated by the word "Webster's," that is "Webster's Dictionary published by the G. & C. Merriam Company, Springfield, Massachusetts"; this being the case, every such other person using the word "Webster's" is representing to the public that the book which he offers is not produced by himself but by the G. & C. Merriam Co., Springfield, Mass.; that it is necessary, therefore, in order to protect appellant, that every such person should not only state clearly and prominently that *he is the publisher* but he must add a caution to the effect that some one else who gets out another Webster *is not the publisher*, as for example, by stating that the dictionary offered by him is not the authentic Webster's dictionary, thus suggesting that some other dictionary is; that his is not a genuine Webster; that his is not in the line of the original publication of Webster's dictionary; that his is not published by the successors of the publishers of Webster's or by the original publisher of Webster's dictionary; or some other similar phrase which will indicate that the book he offers is not what it ought to be and that there *is* a book which is all that could be desired.

Thus, while the Merriams and all their competitors use the one source as the origin of their dictionaries, the Merriams are not to be required to distinguish their work from that of their competitors, but the

latter are required to distinguish their work from the Merriams'. In other words, as between the Merriam Co. and the Syndicate Publishing Co., the Merriam Co. is not required to say that their work is not ours, but we are required to say in effect that our work is not theirs, despite the fact that both works have in law an equal right to appropriate and use the former copyright matter and name of Noah Webster's dictionaries. To state this in another way, all Webster's Dictionaries are descended from the work of Noah Webster, and all have an equal right to claim that parentage; yet every publisher except the Merriams, must brand his own product as illegitimate.

Of course any "warning" such as is proposed is about as effective for the purpose appellant has in view as would be a decree forbidding entirely the use of the word "Webster's" in the title of any books published by competitors of the appellant. In one way it accomplishes *more*, for it gives to the one publisher having the unrestricted right to use the name "Webster's" the benefit of the advertising of its competitors as to the intrinsic merits of Webster's work.

As a matter of practical business the injurious effect of a cautionary notice placed on all "Webster" publications except those issued by G. & C. Merriam Co., is obvious. Every book thus labeled would exhibit something not found on any other book published, no matter what its title; something that would at once attract unfavorable attention. No matter how mild the phrasing, there is at once a suggestion

from the fact of any cautionary notice at all on the book that something is radically wrong with it. The appearance of the cover and title page of books is so well known, and the language ordinarily used thereon is so familiar to the public, that to add any explanation thereto stamps the book as extraordinary and unusual and puts the purchaser on notice that the article he is buying is not quite honest or regular. The appellant in this case knows this to be the fact and realizes *the tremendous advantage* of requiring all its competitors to put an extraordinary stamp across the face of a literary work they offer to the public. It knows what advantage can be taken of any such cautionary phrase by the salesmen of the Merriam publications in seeking to prevent the sale of rival dictionaries. How effective it would be for a salesman to point to the title page and outside cover of the competitive Webster dictionary and show that it was stamped with a sort of red flag, warning the prospective purchaser of danger, and that this warning label was required by the courts! It is impossible for the ordinary purchaser to pick up such a book, so labeled, without receiving the impression that in some way there is a confession of inferiority, if not a lack of genuineness, in the product. More than this, the caution also necessarily implies that some other publisher *does produce* a superior or the genuine article. Not only is there this condemnation of the work which would have to be stamped on the front cover and back of every competitive volume and "plainly printed and prominently displayed," in

every advertisement, circular and notice, but the expense alone of so labeling every statement as to the work is *a very material item*.¹

The net result would be to drive all other publishers out of the market and thus create an absolute monopoly in the publication of lexicographical matter, the copyright of which has long since expired, and this monopoly would be more advantageous than if the copyright were still existing and held by the Merriams, for in the one case it would be limited, while in the other it would be perpetual.

Can one publisher of the work of Webster, upon which the copyright has expired, acquire, by any means, any such right against other publishers? That is the foremost question in this case.

"The law of unfair competition" says counsel for appellant in his brief (page 9) "rests upon the principle of business morality that one person will not be permitted to pass off his goods as those of another, who has succeeded in establishing a reputation for the quality of his goods." With this introduction he cites a mass of authorities, both English and Ameri-

¹The court can take judicial notice of the fact that in ordinary newspaper size type such a notice as would be required occupies two lines; but if conspicuously displayed the number of lines increases accordingly; that in newspapers published in large cities the cost per line for book advertising probably varies from 20 cents to 30 cents per insertion. It would be fair to say that the average advertising cost would be at least 10 cents a line, or 20 cents per single insertion, in small print, or from 40 cents to \$1.50 in print twice to five times as large. In the case of an extensive newspaper campaign, such as appellee carried on, in which the space occupied by his advertisements, at current rates, would cost at current rates, \$2,500,000, it can readily be perceived that the advertising space occupied by the cautionary notice even if it represented but a hundredth part of the whole would cost at current rates \$25,000.

can, Federal and State, on the subject of unfair competition. From these he deduces the conclusion that some one concern publishing Webster's dictionary after the copyright has expired, can either prevent all others from using "Webster" in the title of their dictionaries, or require that every other publisher not only set forth his own name, as publisher, but further *explain* by a warning to the public the character of his particular publication as contrasted with that of the one publisher in question.

To meet this contention it is not necessary to review all the cases in appellant's brief, inasmuch as this court in several decisions has fully covered the subject with which the contention is concerned.

The case of *Singer Manufacturing Co. vs. June Manufacturing Co.*, 163 U. S., 169, involved the question as to the protection to which one manufacturer was entitled, who, after the expiration of the patent on his product, continued to manufacture that product and to call it by the name by which it had become known, and built up a good will for that name, as against competing manufacturers who were using the same name for the same product. In that case the Singer Manufacturing Co. had produced under a patent a sewing machine known as the "Singer." The patent expired about 1876, and competitors sprang into existence who began to manufacture machines which they called "Singer" sewing machines. Among such was the June Manufacturing Co. The June Manufacturing Co. used the word "Singer" on its machines and *imitated* in the devices cast in the

legs of the stand, in lettering, and in other ways (including the use of a dummy screw which served no purpose whatever) the machines manufactured by the Singer Company, and for a while even used the initials of the Singer Company, and in advertisements imitated the cuts and prints used by the latter company. The Singer Company claimed that the acts of the defendant constituted unfair competition and sought to enjoin the use by the defendant of the word "Singer" as a designation of its machines and also sought to enjoin the continuance of the various imitations of the machine of the Singer Company.

The first inquiry by the Court was whether the name Singer, used by the Singer Company during all the time it manufactured under the patent, and also for some time after the expiration of the patent, had come to indicate in its primary sense the class and type of machines made by the Singer Company and also continued in a secondary sense to convey to the public mind the machines manufactured by the Singer Manufacturing Co. The Court concluded that the name "Singer" applied to Singer sewing machines had come to indicate a particular type of machines and also continued to indicate the source of manufacture, that is, the Singer Manufacturing Co.

The next inquiry was: What consequences should follow from this? Has the manufacturer, on the cessation of the monopoly, the right to prevent another manufacturer from using the same name to describe a sewing machine made according to the expired "Singer" patent; or, if the original manufacturer has no

right to prevent another from making such machines and calling them by the same name, does one who makes the machine with such name enjoy the liberty without any resulting duty whatever, or is it accompanied with certain obligations and, if so, what are these obligations?

As to the first question the Court concludes that upon the expiration of the patent any one could manufacture such sewing machines using all the devices covered by the expired patent and, that, as a necessary consequence of this, any one could use the name by which the patented machine has become known.

At page 185 the Court say:

“It is self-evident that on the expiration of a patent the monopoly created by it ceases to exist, and the right to make the thing formerly covered by the patent becomes public property. It is upon this condition that the patent is granted. It follows, as a matter of course, that on the termination of the patent there passes to the public the right to make the machine in the form in which it was constructed during the patent. We may therefore dismiss without further comment the complaint, as to the form in which the defendant made his machines. It equally follows from the cessation of the monopoly and the falling of the patented device into the domain of things public, that along with the public ownership of the device there must also necessarily pass to the public the generic designation of the thing which has arisen during the monopoly, in consequence of the designation having been acquiesced in by the owner,

either tacitly, by accepting the benefits of the monopoly, or expressly, by his having so connected the name with the machine as to lend countenance to the resulting dedication. To say otherwise would be to hold that, although the public had acquired the device covered by the patent, yet the owner of the patent or the manufacturer of the patented thing had retained the designated name which was essentially necessary to vest the public with the full enjoyment of that which had become theirs by the disappearance of the monopoly. In other words that the patentee or manufacturer could take the benefit and advantage of the patent upon the condition that at its termination the monopoly should cease, and yet when the end was reached disregard the public dedication and practically perpetuate indefinitely an exclusive right.

The public having the right on the expiration of the patent to make the patented article and to use its generic name, to restrict this use, either by preventing its being placed upon the articles when manufactured, or by using it in advertisements or circulars, would be to admit the right and at the same time destroy it. It follows, then, that the right to use the name in every form passes to the public with the dedication resulting from the expiration of the patent."

Coming to the second question it is said :

"But it does not follow, as a consequence of a dedication, that the general power, vested in the public, to make the machine and use the name imports that there is no duty imposed on the one using it to adopt such precautions as will protect

the property of others and prevent injury to the public interest, if by doing so no substantial restriction is imposed on the right of freedom of use."

What is the measure of this duty? It is to indicate that the machine put out *is made by him*. On page 187 it is said:

"If the name is availed of by another without clearly indicating that the machine upon which the name is marked *is made by him*, then the right to use the name because of its generic signification would imply the power to destroy any good-will which belonged to the original maker.
* * *

"To compel the one who uses the name after the expiration of the patent to indicate that the articles *are made by himself* in no way impairs the right of use."

The court then states that ~~these~~ views as to the duty resting upon any one who uses a name which is in the public domain, is fully supported by numerous authorities and these authorities are reviewed.

The first is *Fairbanks vs. Jacobus*, 14 Blatchf, 337, where it was sought to restrain the defendant from making or selling an imitation of "Fairbanks" scales or calling such scales "Fairbanks" and in which it was held that, by reason of the expiration of the patents, there was not any invasion of the plaintiff's rights by the use of the name. The limit of plaintiff's right was to prevent the defendant from

pretending that the scales made by him were in fact made by another.

The next case is *Singer Mfg. Co. vs. Larsen*, 8 Biss, 151, where it was sought to restrain the defendant from the use of the name "Singer" and in which the court said that the plaintiff could not prevent other persons from manufacturing the machine and calling it the "Singer," but in doing so they must not imitate the machines made by the Singer Co. in such way as to indicate to the public that the machines manufactured by them were in reality the machines manufactured by some one else.

The next case is *Singer Mfg. Co. vs. Stanage*, 6 Fed., 279, in which case it was said that after the expiration of the patent on the Singer machine every one had an equal right to make such machines and to use the word "Singer." The court entered into no discussion of the limitations resting on such person in the use of the name, but said in effect that since the Singer Mfg. Co. had used the name of the "Singer Mfg. Co." in connection with the descriptive name "Singer" and the defendant used the name "Stewart" as the manufacturer of the "Singer" machine made by him "*no one of ordinary intelligence could suppose that the 'Stewart' manufacture was the manufacture of the plaintiff.*"

The next case is *Singer Mfg. Co. vs. Riley*, 11 Fed., 706. No ruling was made in that case as to the duty of the defendant in using the name "Singer."

The next case referred to is *Brill vs. Singer Mfg. Co.*, 41 Ohio St., 127, in which it was held that the Singer Co. could not prevent others from using the

name "Singer" on sewing machines. The obligation of the defendant was not discussed, but this court in commenting on the case says:

"It might also be inferred from the report of the case that the designation of the defendant's machine was accompanied by the statement *as to who was the manufacturer.*"

Next is the case of *Gally vs. Colt's Patent Fire-Arms Manufacturing Co.*, 30 Fed., 118, which involved the right to use the word "Universal" to describe a patented printing press, the patent on which had expired. The defendant in that case could not be said to be resorting to unfair competition because the machines which he manufactured and which bore the name "Universal" *also bore his name as manufacturer.* The following is the language of this court in stating the case referred to:

"Any manufacturer who uses the name now does so to show that he manufactures the Gally press, which he may rightfully do, and does not represent to the public that it is getting any skill or excellence of workmanship which Gally possessed, and does not induce it to believe that the presses are manufactured by the plaintiff."

The next case referred to is *Merriam vs. Holloway Pub. Co.*, 43 Fed., 450. It involved the right of the defendant to use the words "Webster's Dictionary." This court quotes from the opinion of Mr. Justice Miller in that case in part as follows:

"I want to say, however, with reference to the main issue in the case, that it occurs to me that this proceeding is an attempt to establish the doctrine that a party who has had the copyright of a book until it has expired may continue that monopoly indefinitely, under the pretense that it is protected by a trade-mark or something of that sort. I do not believe in any such doctrine, nor do my associates. When a man takes out a copyright for any of his writings or works, he impliedly agrees that, at the expiration of that copyright, such writings or works shall go to the public and become public property. I may be first to announce that doctrine, but I announce it without any hesitation. If a man is entitled to an extension of his copyright, he may obtain it by the mode pointed out by law. The law provides a method of obtaining such extension. The copyright law gives an author or proprietor a monopoly of the sale of his writings for a definite period, but the grant of a monopoly implies that, after the monopoly has expired, the public shall be entitled ever afterwards to the unrestricted use of the book."

"The contention that complainants have any special property in 'Webster's Dictionary' is all nonsense since the copyright has expired. What do they mean by the expression 'their book,' when they speak of Webster's Dictionary? It may be their book if they have bought it, as a copy of Webster's Dictionary is my book if I have bought it. But in no other sense than that last indicated can the complainants say of Webster's Dictionary that it is their book."

The next case is *Merriam vs. Famous Shoe & C. Co.*, 47 Fed., 411. In that case, as shown by the quota-

tions used, it was unnecessary to determine what form of relief should be administered if the allegations of the bill should be proved on final hearing.

In addition to the American cases, certain English cases are also referred to in the *Singer Case*.

The first of these is *Wheeler & Wilson Mfg. Co. vs. Shakespear*, 39 L. J. Ch., 36, in which Vice-Chancellor James said that he could not restrain anyone, after the expiration of patents, from using the name Wheeler & Wilson to describe a sewing machine or from representing his article as being the article which was so patented.

The next English case is *Cheavin vs. Walker*, L. R. 5 Ch. Div., 850, which involved the right of a competitor of the manufacturer under the patent, to call a filter, the patent on which had expired, by the name under which it had become known, that is, "Cheavin's patent." The court said that on the expiration of the patent the manufacture of the machine was open to all the world, and the following language is quoted from the opinion:

"The invention becomes then entirely *publici juris*. The plaintiff, and also the defendants had a right to tell the world that they were making the article according to the expired patent, and *both parties have done this*. It is impossible to allow a man to prolong his monopoly by trying to turn a description of the article into a trade-mark.

" 'Cheavin's Patent' is a correct description of the principle according to which the article was

made, and there follows a distinct statement that it was manufactured by Walker, Brightman & Co. *Therefore on this ground also the case made by the plaintiff fails."*

The next case is *Linoleum Mfg. Co. vs. Nairn*, L. R. 7 Ch. Div., 834, where the right to the exclusive use of the word "linoleum" was asserted. The substance to which the name had attached was covered by patents which had expired. Quotation is made from the opinion as follows:

"In my opinion it would be extremely difficult for a person who has been by right of some monopoly the sole manufacturer of a new article, and has given a new name to the new article, meaning that new article and nothing more, to claim that the name is to be attributed to his manufacture alone after his competitors are at liberty to make the same article."

After the quotation, this court observes:

"As the article manufactured by the defendant was clearly marked with the source of manufacture, the case was not one requiring the enforcement of the duty to designate the origin of manufacture."

Since that was the fact, the court in the *Linoleum* case said:

"There has been neither infringement * * * nor any attempt on the part of the defendant to

represent the goods which they intended to sell as goods made by the plaintiffs."

The court then reviews the Scotch and French decisions. In citing the latter cases the court refers to the distinction between the case where both competitors are using individual names as producers of an article having a name distinct from that of either manufacturer and the case where the name of the one manufacturer is also the designation of the product.

From all the cases referred to this court concludes that if an article has been patented and the patent expires and the right to make the article is thus dedicated to the public *along with the name by which it is known*,

"where another avails himself of this public dedication to make the machine and use the generic designation, he can do so in all forms, with the fullest liberty, by affixing such name to the machines, by referring to it in advertisements, and by other means."

But in thus using the name of the article

"the name must be accompanied with such indications that the thing manufactured *is the work of the one making it* as will unmistakably inform the public of *that fact*."

Applying the principles to the case before it this court ordered that the defendant be enjoined from using the word "Singer" on its machines without

specifying that such machines were the manufacture of the defendant, or to quote the language

“without clearly and unmistakably specifying in connection therewith that such machines are *the product of the defendant or other manufacturer and therefore* not the product of the Singer Manufacturing Company.”

In *Holzapfel's Compositions Co. vs. Rahtjen's American Composition Company*, 183 U. S., 1, this court cites the Singer case and applies the principles there announced to the case under consideration. In the Holzapfel case there was involved the right of one manufacturer to use the name of “Rahtjen's Composition” to describe a patent paint the patent for which had expired, as against another manufacturer who made the same article under the same name and had been so manufacturing it under the patent while it existed. Applying the principles of the Singer case, the court says:

“In the manufacture and sale of the article, of course, no deceit would be tolerated, and the article described as ‘Rahtjen's Composition’ would, when manufactured by defendant, have to be plainly described *as its manufacture*.”

The proof showed that this had been done and the article had been described as manufactured by the Holzapfels, whose name was different from that of the other manufacturers; and the injunction asked for was refused.

In *Elgin National Watch Co. vs. Illinois Watch Case Co.*, 179 U. S., 665, this court refers to the Singer case, saying that in the opinion of the court in that case it was held:

“The word ‘Singer’ was adopted by the Singer Company as designative of their distinctive style of machines, rather than as solely indicative of the origin of manufacture. That word constituted the generic description of the type and class of machines made by that company, and on the expiration of the patent, the right to make the patented article and to use the generic name necessarily passed to the public.”

But, the court points out, it was also held, that no one could destroy whatever good-will belonged to the original maker by using the name by which the article had become known

“without clearly indicating that the machine upon which the name is marked *is made by him.*”

Where the surname of the second manufacturer is *the same as that of the first manufacturer*, who has produced the article and used his own name to describe it and has acquired a good-will for such name, then manifestly the use of his own name merely, by the second manufacturer, may not sufficiently designate the article as of his own make, as distinguished from that of the first manufacturer. In other words, when he uses his own name, he is at the same time using the name of the original manufacturer and thus

the mere use of his own name does not distinguish between the two. Therefore, in such circumstances, something else may be required. This is the purport of the cases of *Herring Hall-Marvin Safe Co. vs. Hall's Safe Co.*, 208 U. S., 554, and *L. E. Waterman Co. vs. Modern Pen Co.*, U. S., Supreme Court Advance Opinions, January 1, 1915, page 91.

What then is the final conclusion to be obtained from the "doctrine" of the *Singer Case*? It is that when a patent expires upon an article which has been patented, the manufacture of the article and use of the name by which it became known are open to all. If any one has built up a good-will, however great or small, by the use of the name as describing an article manufactured by him, he still can claim no exclusive right to use the name, but all others (having surnames clearly distinguishable from the manufacturer who has acquired the good-will so that no confusion of the names of manufacturers can result) are free to use it, provided they indicate that the article so manufactured and sold by such name is an article *made by them* by affixing their name to the product, as its producer, just as the manufacturer who has acquired the good-will has affixed his own name to the product.

Anything less than this might well enable a rival manufacturer to destroy whatever good-will his competitor has built up; anything more than that would tend to perpetuate a monopoly in the trade which it was the purpose of the laws of *limited* monopoly

(such as the patent and copyright laws) to prevent.

To say that competitors may use the same name as the apt description of the article freely and without restriction and yet trammel that use with cautionary notices would be, in the language of the court, in the *Singer case*:

“To admit the right and at the same time destroy it.”

We agree with the statement in the *Singer case* that

“To compel the one who uses the name after the expiration of the patent to indicate that the articles *are made by himself* in no way impairs the right to use.”

But to compel him to accompany that use by cautionary notices which advertises another manufacturer as the original or authentic or genuine, impairs, or indeed, commercially destroys, the right to the use.

As said by the court in *Singer Manufacturing Co. vs. Stanage*, 6 Fed., 279, cited with approval by this court in the *Singer case*, *supra*:

“While the courts are prompt to protect the property rights of any skilled person in his trade-mark or name, whereby he may have in the market the benefit of his skill and reputation, they must also guard against every effort to secure a monopoly not arising therefrom. When

a marketable product is publicly known or designated by a generic name, no one should be permitted to shut out all just competition by claiming the exclusive right to use that name. If there is a peculiar excellence, real or supposed, in his manufacture, he can establish by his trade-mark or name the right to protection against the piracy thereof; but he can not go further and insist that, independent of his personal skill or manufacture, he can cover by his trade-mark or name whatever may properly distinguish the common article which every one has a right to make or vend."

Analyzing the facts before it, in the light of the principle stated, the court said further:

"The plaintiff did adopt special names and devices to indicate what it put on the market as its manufacture, viz., 'The Singer Manufacturing Company,' imprinted on the shield and arm of the machine, etc. The defendant placed on its shield and arm the words, 'The Henry Stewart's Manufacturing Co.,' with another device. Now as each corporation had an equal right to make and vend that class of machines known in the market as 'Singer' machines, and as the defendant used neither the name nor device of the plaintiff, there is no violation of the plaintiff's trade-mark or name."

Applying the doctrine of the Singer case to the case at bar, it must be noted, first, that we have here no question of confusion of names of makers resulting from any similarity between the name "G. & C. Mer-

riam Co." and the name of any of its competitors. Therefore that branch of the subject is not here for consideration.

We may say, then, adapting the principles of the Singer case to the facts in this:

The copyright having expired on the work of Webster, and his name as describing his work having fallen into the public domain, every one has the right to use his name as describing his work and every one has just as much right to use the Webster literary material and add to it, abridge or supplement it, and use the name Webster in connection with the word dictionary, for the resulting product, as the Merriam Company has or can have. Whatever goodwill the Merriam Co. has built up can not properly be injured or destroyed by any competing publisher, by pretending that *his* work is the publication of the Merriam Company, but he must (as must also the Merriam Company) state in his book at the proper place and in his circulars, wherever the name of the publisher is given, his own name as publisher. This has been done by every publisher of Webster's Dictionary (and there have been more than seventy of them). Not only this, but each individual publisher has further identified the publication as his own by using some distinguishing word or phrase in the title, added to the words "Webster's Dictionary"—such as, "Webster's *New Standard* Dictionary," "Webster's *Imperial* Dictionary," etc., which custom the Merriams also adopted to distinguish their own books, calling them "Webster's *International* Dic-

tionary," "*Webster's New International Dictionary*," etc.

All rights the Merriams could secure by any principle of the law of unfair competition, recognized by this court, have already been observed by all the Merriam's competitors. To give the Merriams more than this by requiring all their competitors to accompany their publication with an explanation or caution, the net result of which would be to warn every customer that he is liable to be defrauded by trading with the concern whose books are so labeled, would secure to the Merriam Company for all practical purposes a monopoly in the use of the name "*Webster's*" in the titles of dictionaries—a monopoly which, when asked for directly, every court before whom they have appeared, has emphatically refused them (and there have been numerous suits). With their experience as publishers, knowing the practical effect of what they ask, they are now seeking to secure by indirection what could not be secured directly.

II.

The Secondary Meaning Theory.

In the discussion above, we have sought to demonstrate that even assuming, for the sake of argument, the full effect of all appellant's various claims, nevertheless, within the ultimate limits of the doctrine of unfair competition, as settled by this Court, the appellant would not be entitled to the relief prayed for.

But it must be understood that, in our view, the contention of the appellant that it possesses anything more than the right to the use of the name "Webster's," just as every other publisher has, after the expiration of the copyright, and that it owns a "secondary meaning" trade-mark right to the name "Webster's," is without any basis whatever in law or in fact.

The proposition, briefly stated, is that the name "Webster's" has lost its significance as the name of the well-known author, and has now come to mean, when applied to dictionaries, the publication of the G. & C. Merriam Company.

Can one publisher thus appropriate by any means the name of an author as a trade name for his publications of the work of that author after the copyright on the work has expired?

The material in the Merriam publications which entitle them to be called "Webster's" dictionaries was not the work of the Merriam Co. The word "Webster" was not a fanciful name to describe the work of the Merriam Company, but was the name of the author who did the work. That author's work had been copyrighted and his name was associated with it for nearly forty years before the Merriams had anything to do with the publication of Webster's Dictionaries. The name of Webster is famous today as the author of dictionaries. It is that fame of Webster, as such author, that the Merriams and all other publishers of Webster's Dictionaries are now making use of in selling their books. To say that the word "Webster" has lost its meaning as a sur-

name of the distinguished author, and has come to mean, in the minds of the public, the trade name for the dictionaries published by the G. & C. Merriam Co. is, at the least, somewhat startling. Is there any real warrant for such a claim?

In *Black vs. Ehrich*, 44 Fed., 793, Wallace, J., speaking of the "Encyclopedia Britannica," says:

"Neither the author nor the proprietor of a literary work has any property in its name. It is a term of description which serves to identify the work, but any other person can with impunity adopt it and apply it to any other book or to any trade commodity, provided he does not use it as a false token, to induce the public to believe that a thing to which it is applied is the identical thing which it originally designated. If literary property can be protected upon the theory that the name by which it is christened is equivalent to a trade-mark, there would be no necessity for copyright laws."

When an author gives his name to a literary production he is not establishing a trade-mark for the article to be sold, but is providing for the public an apt term which describes the product of his brain. As long as the work is copyrighted no one else can publish or sell it without his permission, calling it either by his name or by any other name. After the copyright expires *any one* is at liberty to republish the work and to use the name of the author in connection with the publication and get the benefits, in the sale of the books, of the author's fame as a writer.

When any publisher, after the expiration of a copyright, secures this, he has enough, and he has no more right to claim any *special property* in the name than he has to claim any *special property* in the literary material.

When this claim of the appellant was first asserted in the courts, in 1890, Mr. Justice Miller, before whom the case was heard, thus characterized it (43 Fed., 452):

“The contention that complainants *have any special property* in ‘Webster’s Dictionary’ is *all nonsense*, since the copyright has expired.”

Further, he said:

“I want to say, however, with reference to the main issue in the case, that it occurs to me that this proceeding is an attempt to establish the doctrine that a party who has had the copyright of a book until it has expired, may continue that monopoly indefinitely, under the pretense that it is protected by a trade-mark, *or something of that sort*. *I do not believe in any such doctrine, nor do my associates.*”

The Circuit Court of Appeals in deciding the case at bar, said of this contention:

“We must not be regarded as assenting to the proposition that the name ‘Webster’s Dictionary’ has a technical or secondary meaning, as indicating a publication of the complainant.”

We submit that the Circuit Court of Appeals was right, and that the Merriams, no matter how long their publication has continued, have not acquired any special property in the name "Webster's" or any technical or secondary meaning rights in that author's name. They have a full and free right to publish the work of Webster, to add to it and revise or abridge it, and to call the books which they sell "Webster's." No one, of course, can publish Webster's Dictionary representing that the publication is not his own, but that of the Merriam Company. But this is the limit of the rights of the Merriams.

Above all considerations of private interest in this case there is a question of public policy involved which must impress itself with special force upon the Court. Here is the work of a great man unconditionally bequeathed to popular education. The dictionary work of Webster and his name are public property. They belong to all the people as fully as do the work of Samuel Johnson and his name, or the Commentaries of Blackstone and his name. To give the slightest judicial sanction to the claim that one publisher may acquire in such works, by their publication, revision, abridgment, amplification, or what not, an interest different from, or superior to, that of any or all other publishers, would impose a distinct hardship upon the public by impairing the value of that which has come to be the property of all.

Let us see, for a moment, what the claim of the Merriams really is, in its last analysis. It may be

true that the appellants publish a good, scholarly Webster's Dictionary, but if their contention is sound, the special or superior rights they claim would be equally secure if the dictionary they publish were unreliable and worthless. In other words, if the mere claim, frequently and persistently asserted, of being early in the field, or in line of the original copyrighted publication, is sufficient to exclude all others, or to brand them as trespassers, then one of the most valuable gifts to posterity may be withheld from public enjoyment, or its use so conditioned that a better production of it must announce itself inferior, while the inferior production may parade itself as the only genuine and authentic. Such a result not only continues a monopoly after its lawful term has expired, but denies to the public the benefit of all progress and improvement.

But even if a secondary meaning could attach to the name of an author of a well known work, the facts in the case at bar wholly fail to suggest that any secondary meaning has been acquired in the name "Webster."

Complainant's contention that the word "Webster's" in the title of a dictionary has acquired a so-called secondary meaning and means the publications of the Merriam Company (Appellant's brief pp. 15, 16) is based upon the statement sought to be established by evidence at the trial that the Merriam Company was, from 1847 to 1889, the sole publishers of all Webster dictionaries.

This statement is made in the face of the finding of fact by the Court below, before whom all the evidence pro and con was submitted and heard, that the statement was "abundantly disproved in the case at bar"—and the opinion of the trial court was concurred in by the Court of Appeals (207 Fed. 515).*

It is made in the face of the record, quoted and used by counsel on both sides, containing a list of 15 other publishers of dictionaries, using Webster's work, with Webster's name in the title, and their own names as publishers, during the period to which appellant refers in speaking of "exclusive user." (Brief of appellant, pp. 57, 58; Brief of appellee, pp. 32, 34.)

Finally, the claim of appellant that a "secondary meaning" had been proven was disposed of by the Circuit Court of Appeals in the sweeping conclusion, after *its* consideration of all the testimony and the opinion of the Court below thereon, that it could not be regarded as assenting to

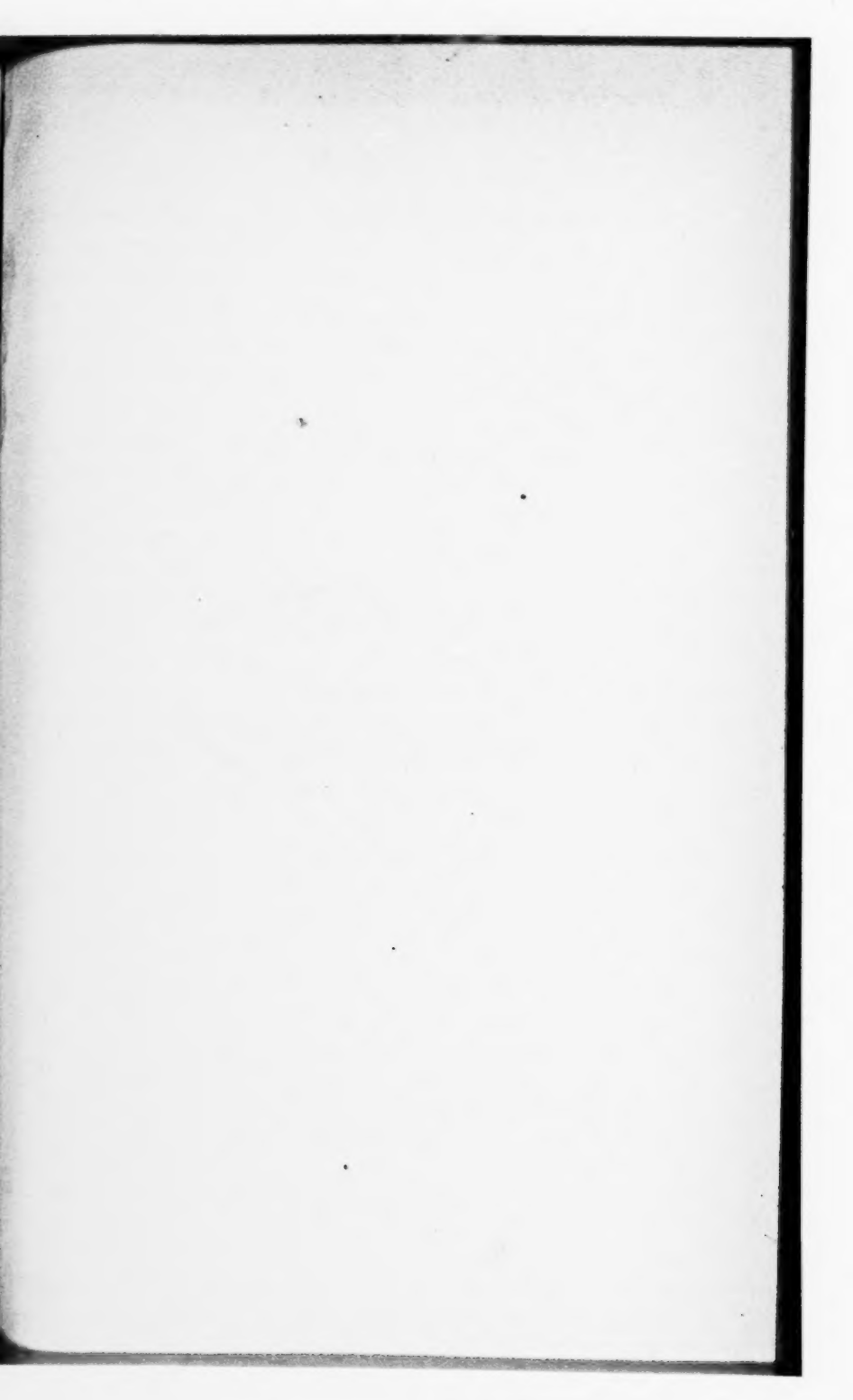
"the proposition that the name 'Webster's Dictionary' has a technical or secondary meaning as indicating a publication of the complainant."

Respectfully submitted,

WADE H. ELLIS,
Counsel for Appellee.

R. GOLDEN DONALDSON,
HUGH A. BAYNE,
CHALLEN B. ELLIS,
Of Counsel.

*The effect of a concurrence of both the lower courts on a question of fact in the case, is well settled in this court. *Ambrose vs. Stuart*, 209 U. S. 665.



**G. & C. MERRIAM COMPANY *v.* SYNDICATE
PUBLISHING COMPANY.**

**APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.**

No. 217. Argued April 14, 1915.—Decided June 1, 1915.

In a case where diverse citizenship exists, the decree of the Circuit Court of Appeals is final unless in addition to the allegations of diverse citizenship, the bill contains averments of a cause of action, and consequent basis of jurisdiction, arising under the Constitution or laws of the United States.

If the jurisdiction of the District Court was invoked on the ground of diversity of citizenship, and averments as to a Federal right are unsustainable and frivolous, or foreclosed by former adjudication of this court, the appeal from the judgment of the Circuit Court of Appeals must be dismissed.

Where the jurisdiction below rests on diverse citizenship, averments of unfair trade, which do not contain any elements of a cause of action under the Federal Constitution or statutory law, afford no basis for jurisdiction of this court of an appeal from the decree of the Circuit Court of Appeals.

237 U. S.

Opinion of the Court.

The Trade-mark Act of 1881 expressly denied the right of an applicant to obtain a trade-mark on his own name, or to acquire in a proper name trade-mark rights not recognized at common law.

The Trade-mark Act of 1905 does recognize the right to obtain trade-marks in a proper name when the same has been in use under specified conditions for ten years, but makes the judgment of the Circuit Court of Appeals final in cases arising under the Act. *Street & Smith v. Atlas Co.*, 231 U. S. 348.

As is the case with patents, so after the expiration of copyright securing the exclusive right of publication, the further use of the name by which the publication was known and sold cannot be acquired by registration as a trade-mark. *Merriam v. Hollaway Co.*, 43 Fed. Rep. 450, approved; and see *Jane v. Singer Manufacturing Co.*, 163 U. S. 169.

The word "Webster" was not subject to registration as a trade-mark under the act of 1881, and a contention based on an attempted registration affords no jurisdiction for this court to review a judgment of the Circuit Court of Appeals, having been precluded by prior decisions of this court.

Appeal from 207 Fed. Rep. 515, dismissed.

THE facts, which involve the jurisdiction of this court of appeals from judgments of the Circuit Court of Appeals, in cases involving rights under the Trade-mark Acts of 1881 and 1905, are stated in the opinion.

Mr. William B. Hale for appellant.

Mr. Hugh A. Bayne, with whom *Mr. Wade H. Ellis*, *Mr. R. Golden Donaldson* and *Mr. Challen B. Ellis* were on the brief, for appellee.

MR. JUSTICE DAY delivered the opinion of the court.

This suit was brought by complainant to enjoin the defendant from the use of the name "Webster" as a trade-mark and trade-name, when applied to the sale of dictionaries of the English language. A decree was entered dismissing the bill in the United States District Court (207 Fed. Rep. 515). This decree was affirmed upon ap-

peal to the Circuit Court of Appeals for the Second Circuit (207 Fed. Rep. 515), and from the latter decree an appeal was taken to this court.

The original bill set up at great length the origin and history of the Webster dictionary publications, the succession of the complainant to the ownership of the rights of publication, and the various copyrights which had been taken out from time to time to protect the use of the name "Webster," as applied to dictionaries of the English language, and facts were set out in detail concerning the various publications which the complainant and its predecessors had made from time to time. The bill, in its original form, relied upon the secondary meaning which, it was alleged, the history of the publications had established in the name "Webster," as applied to English dictionaries, and it was alleged that the exclusive right to use that name in such connection had become the property of the complainant, and entitled it to protection against those who used the word in such manner as to cause their publications to be purchased as and for the publications of the complainant. It was charged that the respondent belonged to the class of persons wrongfully using the name thus acquired, and facts in detail were set forth to support this contention of unfair competition in trade. After the bill was filed an amendment was added setting up the ownership in complainant of certain trade-marks, duly registered in the Patent Office of the United States, in accordance with the statutes in such case made and provided. The amendment alleges the registration of two trade-marks under the Act of Mar. 3, 1881 (c. 138, 21 Stat. 502), and of eight trade-marks under the Act of Feb. 20, 1905 (c. 592, 33 Stat. 724), and it was charged that the defendant used and imitated the complainant's trade-marks upon Webster's dictionaries, by affixing the word "Webster" to dictionaries in a manner closely imitating complainant's registered trade-marks or one of

them, the natural tendency of such acts being to deceive the public and to pass off defendant's dictionaries as and for the dictionaries of the complainant. The prayer of the bill was amended so as to ask relief by injunction against the defendant from in any manner copying, imitating, or infringing any of complainant's registered trade-marks. The bill as amended therefore rested upon (1) allegations tending to establish unfair competition in trade, (2) trade-marks registered under the Act of 1881, and (3) trade-marks registered under the Act of 1905.

A motion to dismiss the appeal was made and passed for consideration to the argument upon the merits, which has now been had.

The Circuit Court of Appeals' decree, affirming the decree of the District Court, was final unless, in addition to the allegations of diverse citizenship which were contained in the bill, there was an averment of a cause of action and consequent basis of jurisdiction arising under the Constitution or statutes of the United States. *Macfadden v. United States*, 213 U. S. 288; *Shulthis v. McDougal*, 225 U. S. 561. If the jurisdiction of the District Court was invoked on the ground of diversity of citizenship, and the averment as to a right arising under the Federal Constitution or statutes was unsubstantial and without real merit, either because of its frivolous character upon its face, or from the fact that reliance was based upon a claim of Federal or statutory right denied by former adjudications of this court, then the appeal to this court must be dismissed. *Newburyport Water Co. v. Newburyport*, 193 U. S. 561, 576; *Equitable Life Assurance Society v. Brown*, 187 U. S. 308, 311.

So far as concerns the allegations of unfair competition in trade, upon which the bill mainly rests, such averments contain no element of a cause of action arising under the Federal Constitution or statutory law. The registered trade-marks, an essential part of which covers the use of

the word "Webster" as applied to dictionaries of the English language, were registered some under the Act of 1881 and some under the Act of 1905. In the latter act there is a recognition of the right to obtain a trade-mark upon a proper name, when the same has been in use for ten years under conditions named in the statute. That act was before this court in *Thaddeus Davids Co. v. Davids*, 233 U. S. 461, and the distinction between it and former acts was pointed out, particularly in that the Act of 1905 gave the right to the use of ordinary surnames as a trade-mark, which right did not exist under the prior legislation. The Act of 1905 contains provisions making the jurisdiction of the Circuit Court of Appeals final. *Street & Smith v. Atlas Co.*, 231 U. S. 348.

The Act of 1881 expressly denied the right of an applicant to obtain a trade-mark upon his own name, and gave no recognition to the right to a trade-mark in a proper name, nor did it confer authority to register such name and thereby acquire a right not recognized at common law. *Brown Chemical Co. v. Meyer*, 139 U. S. 540, 542; *Elgin Watch Co. v. Illinois Watch Co.*, 179 U. S. 665; *Howe Scale Co. v. Wyckoff*, 198 U. S. 118, 134, 135.

Moreover, it appears upon the face of the bill that the registration of the trade-marks relied upon, having the name "Webster" as applied to dictionaries of the English language as their chief characteristic, was made long after the expiration of the copyright securing to the publishers the exclusive right to publish the Webster dictionaries. After the expiration of a copyright of that character, it is well-settled that the further use of the name, by which the publication was known and sold under the copyright, cannot be acquired by registration as a trade-mark; for the name has become public property, and is not subject to such appropriation. Such was the decision of Mr. Justice Miller, sitting at circuit, in the first of what may be called the Webster Dictionary Cases,—*Merriam v.*

Holloway Pub. Co., 43 Fed. Rep. 450. In that case, the learned justice in vigorous terms denied the right to appropriate as a trade-mark the designation "Webster's Dictionary" after the expiration of the copyright. To the same effect is *Merriam v. Famous Shoe & Clothing Co.*, 47 Fed. Rep. 411. These cases were cited with approval in the opinion in *Singer Manufacturing Co. v. June Manufacturing Co.*, 163 U. S. 169, in which case the subject was fully considered, and the cases, American and foreign, were reviewed; the conclusion being reached that on the expiration of a patent there passed to the public not only the right to make the machine in the form covered by the letters patent, but along with the public ownership of the device described there necessarily passed to the public the generic designation of the thing which had arisen during the life of the monopoly. As the cases cited in the opinion in that case show, this doctrine is no less applicable to the expiration of a copyright, upon the termination of which there passes to the public the right to use the generic name by which the publication has been known during the existence of the exclusive right conferred by the copyright. In the *Singer Case*, at page 202, the same doctrine was applied to a trade-mark containing the word "Singer" and attempted to be used as one of the constituent elements of a trade-mark.

In that case while the right of another, after the expiration of the monopoly, to use the generic designation was recognized, it was also stated that its use must be such as not to deprive the original proprietor of his rights, or to deceive the public, and that such use of the name must be accompanied with indications sufficient to show that the thing manufactured or sold is the work of the one making it, so that the public may be informed of that fact,—this latter consideration arising from the use of the name as designating the production of the original owner, and in order to prevent confusion and unfair trade, and

the wrongful appropriation of another's rights. As we have already said, the feature of the case involving unfair competition in trade came within the jurisdiction of the District Court because of diverse citizenship, and the right of appeal was limited to the Circuit Court of Appeals.

From what has been said, it follows that the name "Webster" was not subject to appropriation or registration as a trade-mark, under the Act of 1881, and the contention to the contrary as a basis for jurisdiction in the District Court was devoid of substantial merit and was foreclosed by previous decisions of this court. In reaching this conclusion, we have not overlooked the cases relied upon by the complainant, cited in opposition to the motion to dismiss for want of jurisdiction, in which this court has held that where jurisdiction was invoked upon diverse citizenship and also because of alleged rights arising from the Federal Trade-Mark Statute (c. 138, 21 Stat. 502) of 1881, this court has jurisdiction upon appeal from the Circuit Court of Appeals—*Warner v. Searle & H. Co.*, 191 U. S. 195; *Standard Paint Co. v. Trinidad Asphalt Co.*, 220 U. S. 446; *Baglin v. Cusenier Co.*, 221 U. S. 580; *Jacobs v. Beecham*, 221 U. S. 263. These cases are readily distinguishable from the one at bar, in which there was an attempt to register and obtain a statutory trade-mark upon a proper name, which registration was also long after the expiration of the copyright embodying the same designation as its distinguishing feature.

It follows that this appeal must be dismissed for want of jurisdiction.

Dismissed.